

**CONVENIENT CONSTRUCTS:  
HOW CHIEF POLICE OFFICERS IN ENGLAND AND WALES  
UNDERSTAND THE RIGHT OF POLICE TO EXERCISE POWER**

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**By**

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## **Abstract**

### **Convenient constructs: How chief police officers in England and Wales understand the right of police to exercise power**

Chief police officers are an elite group whose beliefs and actions may contribute to reproducing, developing or transforming police legitimacy. This research answers the question, ‘how do chief police officers in England and Wales understand the right of police to exercise power?’ The chief officers who participated in this research all invoked duties to protect the public (particularly the most vulnerable), policing by consent and explanations based in law and associated checks and balances. However, the significant and original academic contribution that this thesis makes is the finding that these legitimating constructs are confused, conflicted and, above all, convenient.

Confusion was evident in vague accounts of vulnerability and hazy notions of consensual policing. When discussing law, operational independence was described as ‘grey’, which may have implications for the ability or will of chief officers to resist the imposition of priorities that infringe on civil liberties.

Conflict was found between a rhetoric of consent and the practice of coercion. Narratives of vulnerability and policing by consent also clashed, as hunting threats to the vulnerable may not compensate for failures to tackle issues that are more immediate for many people. Participants’ claims that law and associated checks and balances are important in ensuring police power is used properly sat uncomfortably with their distaste for the process of scrutiny. These tensions and conflicts contributed to participants’ perceptions that they were pressured and that their positions were precarious.

Narratives of complexity and change can be convenient in helping chief officers assert a privileged position when making decisions about the use of power. The vagueness of vulnerability and hazy conceptualisations of consent may also be convenient legitimating narratives, which cloak coercion and control. A leitmotif was a convenient construction of a broadly consensual ‘now’ contrasted with a more coercive ‘then’, which could camouflage contemporary concerns about police legitimacy. Together these stories conveniently help chief officers, and potentially politicians, to set priorities for the use of police power that are difficult for citizens to challenge, particularly when ‘folk devil[s]’ (Wells, 2016: 278) and policing myths (Emsley, 2014) are called on in attempts to legitimate such agendas.

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## **Abbreviations**

ACC – Assistant Chief Constable, Commander in London

ACPO – Association of Chief Police Officers

CC – Chief Constable, Assistant Commissioner in London

C o P – College of Policing (replaced NPIA in 2012)

CPMG - Crime and Police Monitoring Group

DCC – Deputy Chief Constable, Deputy Assistant Commissioner in London

HMIC – Her Majesty’s Inspectorate of Constabulary (HMICFRS - Her Majesty’s Inspectorate of Constabulary and Fire and Rescue Services, since 2017)

HMCIC – Her Majesty’s Chief Inspector of Constabulary

HO – Home Office

IAG – Independent Advisory Group

IOPC – Independent Office for Police Conduct (replaced IPCC in 2018)

IPCC - Independent Police Complaints Commission

NPCC – National Police Chiefs’ Council (replaced ACPO in 2015)

NPIA – National Police Improvement Agency

PCC – Police and Crime Commissioner

SCC – Strategic Command Course

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## **Chapter One**

### **Introduction**

Weber (1904: 109) highlighted the great ‘influence of ideas in the development of social life’ and argued that important ideas should be examined. Legitimacy is such an idea and was studied by Weber (1922-23). This thesis scrutinises legitimacy through the prism of chief police officers’ understandings of the supposed right of police to exercise power. This introduction provides context for later discussions of this contested right and identifies that further research into chief police officers in England and Wales is timely and necessary, particularly in the wake of the Police and Social Responsibility Act 2011 and following changes to police governance, funding and apparent priorities. A research gap caused by the preponderance of quantitative research looking at police legitimacy is then established and examined. When these issues are considered together a requirement is identified for qualitative research that critically investigates the supposed right of police to exercise power, by gathering, exploring and interpreting the understandings of this right held by chief police officers in England and Wales. Finally, the structure of the thesis and purpose of each chapter will be outlined.

### **Context**

The right of police to exercise power can be construed as a ‘taken - for - granted - convention’ (Harre and Bhaskar, 2001: 28) and there is arguably a discourse, or construction of stories encouraging the acceptance of this supposed right. This benign version of policing was promoted by Reith in his ‘rose-tinted’ history of British police (Reith, 1943 and 1956 and Emsley, 2014) and is reflected in accounts provided by past chief police officers (Mark, 1977, Oliver, 1987 and Reiner, 1991) and recently found in justifications provided by contemporary chief officers (Roycroft, 2016). However, the legitimacy of police and their right to exercise power has been both claimed and challenged since the foundation of the Metropolitan Police in London in 1829. The instructions to the Metropolitan Police issued by Rowan and Mayne, the first commissioners of the Metropolis (Metropolitan Police, 1985: 10, Emsley, 2014: 12

and *The Times*, 25 September 1829), acted as directions to police officers but also as an early legitimating narrative to counter resistance to the new police, a struggle that continued through the nineteenth century (Storch, 1975). The assertion of the police's right to exercise power remained controversial through the twentieth century (Reiner, 2010: 39 – 110), with scandals that enveloped the police in the 1950s leading to a Royal Commission being set up in 1960 (Royal Commission, 1962) resulting in the Police Act 1964 (Stallion and Wall, 1999: 19 -20). The violent disorders of 1981 and 1985 and policing of industrial disputes and miscarriages of justice in the 1980s and 1990s arguably mark another cycle of concern, although debatably focused not so much on the right to exercise power as on the way such power was exercised (Scarman, 1981 and Reiner 2010: 39 -110). These concerns were addressed by critical criminologists at the time, as illustrated, in the wake of the 1981 disorders, by Brogden (1982: 237), who described police legitimacy as an 'imaginary relationship'.

Police legitimacy has continued to be contested in this century, with concerns about effectiveness and apparent declines in public confidence (HMIC, 2005), sustained controversy about police stop and search practice (HMIC, 2013) and explicit attention being paid to police legitimacy in the inspection process (HMIC, 2015). Controversy about legitimacy has also extended to the behaviour of chief officers, partly prompted by several chief officers being dismissed or forced to resign, including Chief Constable Sean Price in 2012 (BBC, 2012), Commander Ali Dizae in 2013 (BBC, 2013) and Chief Constable Nick Gargan in 2015 (Griffiths, 2015). So, the superficially accepted, but frequently contested, right of police to exercise power remains relevant for researchers. Chief police officers arguably have an important role to play in the development of this supposed right.

Goldsmith (2005) proposed that legitimising the police should start at the top. It can also be argued that research looking at police legitimacy should play close attention to officers in the most senior and (probably) powerful police positions, whose actions and stories about the right to exercise power may have considerable influence in reproducing, developing, or even transforming, police legitimacy, for good or ill. However, the literature on police chief officers is limited and whilst it touches on legitimacy this has not been the primary concern for previous researchers (Reiner, 1991; Stallion and Wall, 1999; Savage, Charman and Cope, 2000; Loader and Mulcahy, 2001 and 2001a; Caless, 2011; Fisher, 2012; Roycroft, 2016, and an

American study, Isenberg, 2010). This literature is discussed in detail in chapter three but the pictures these researchers provide are inevitably snapshots that fade with time. Further, two of the more recent studies are largely uncritical, with Isenberg's (2010) work being a study for policing rather than of policing and Roycroft's (2016) book embraces a narrative of policing by consent and reports, but does not interpret, the stories he gathered from chief officers.

This thesis was also necessary and timely, as no critical research into chief police officers had been conducted since the implementation of the Police and Social Responsibility Act 2011, which introduced police and crime commissioners and other reforms. The Coalition Government lauded this change in police governance as a democratisation of policing. However, these reforms also risk the rise of populist majoritarian agendas, which may garner votes but fail to protect the interests and liberties of minorities and others with little power and influence (Lister and Rowe, 2015: 371). These changes were accompanied by apparent shifts in police priorities, such as a move from reassurance and public confidence to crime reduction (May, 2010) and a little debated new focus on vulnerability (College of Policing, 2016). In addition, substantial cuts in police budgets (HMIC, 2013a and Weinfass, 2017) were made following the 2010 election. Together these changes may have placed the police service and chief police officers in a precarious position.

Whilst there is a body of literature looking at chief police officers, a great deal more scholarly attention has been paid to the attitudes, behaviours and cultures of more junior officers, including, in a far from exhaustive list, Skolnick (1966), Muir (1977), Reiner (1978), Shearing (1981), Holdaway (1983), Young (1991), Chan (1996) and Charman (2017). Insufficient research has focused on very senior officers. Further grounds for renewed scrutiny of chief police officers can be found in the tendency of elites to protect themselves, yet much social science 'concentrate[s] on marginalized populations' (Moore and Stokes, 2012: 443). This research shifts attention to a powerful elite.

However, most recent research on police legitimacy has focused neither on junior or senior officers, it has been dominated by research looking at the perceptions of the public towards the police and the telescope is seldom reversed (Kaariainen and Siren, 2012). This research provides fresh insights by reversing the telescope and examining

legitimacy from the relatively unexplored vantage point occupied by chief police officers. This thesis fills a gap in combining a study of chief police officers and an examination of the supposed right of police to exercise power. This research also addressed a qualitative lacuna in research into police legitimacy, as recent studies of police legitimacy have been dominated by quantitative methods looking at procedural justice (Tankebe, 2013), an example being the New European Crimes and Trust Based Policy, generally referred to as Fiducia (2014).

This study explored and interpreted the stories told by chief police officers about the right to exercise power and contributes to knowledge about police legitimacy and chief officers. This endeavour is important as police have a near monopoly on the legitimate use of force (Reiss, 1971) and the understandings that chief police officers hold about the right to exercise power have implications for how police power is used and for the legitimacy of the police. An overview of how this thesis is structured follows.

## **Overview**

This thesis continues with two chapters reviewing the relevant literature and then moves onto the methodology and methods adopted. This is followed by a chapter setting out the context for three succeeding chapters of analysis. An examination of the issues and implications arising from the research concludes the thesis. The purpose of the remainder of this introductory chapter is to outline how each of these chapters contribute to the thesis.

In chapter two a selection of theoretical explanations of legitimacy relevant to understandings of the supposed right of police to exercise power are explored. This helped form a theoretical frame for the thesis, including identifying issues that were investigated and gaps in knowledge that were explored. Four themes emerged from this literature review which helped to shape the thesis, namely: the right to exercise power; how consent is constructed and gauged; the role of rules and laws in building legitimacy; and the notion of broadly shared values between those with power and subordinates.

Chapter three builds on this by reviewing the body of literature looking at chief police officers in England and Wales. The review is chronological and put in the context of

each of the periods that have been reviewed (1981 -1997, 1997 – 2003, 2003 – 2010 and 2010 – 2017). Seven further themes are identified in the review: accountability; policing by consent; community policing Vs law enforcement view; constabulary/operational independence; new public management and police performance management; social origins, career paths and social and policing philosophies; and changes in the senior police voice. These themes informed the framework for gathering data for this thesis. Together chapters two and three guided the field work and provided material that aided interpretation of the data collected for this empirical research.

Chapter four sets out the rationale for the research approach, its methodology, methods and form of analysis chosen. The choice of a critical realist research paradigm is explained, and the case is made for the use of qualitative semi-structured interviews to gather stories and accounts from chief officers to answer the question, ‘how do chief police officers in England and Wales understand the right of police to exercise power?’ The selection of participants is discussed and how access was obtained to them is clarified. Ethical concerns and safeguards are examined, including the implications for the thesis of my status as a former member of the elite being studied.

Chapter five acts as a bridge between the literature review and the subsequent chapters of analysis. Context is provided, starting with discussion of scrutiny of elites, including chief police officers. Claims made by participants about increasing complexity and accelerated change are scrutinised, together with narratives about new criminality, vulnerability and austerity. Participants’ social, educational and policing backgrounds are looked at, as are their motivations for joining the police. The implications for the research of this previous experience are considered and a tension between an attraction to excitement, sometimes associated with authority, and a declared commitment to public service are assessed. This is placed in the context of the consequences this may have for chief officers’ understandings of the right to exercise power, which are addressed in the following chapters.

Chapter six analyses understandings of this supposed right based on a duty to use power to protect people, particularly the most vulnerable in society. Links with traditional duties to protect the public are explored and tensions with the concept of consensual policing are examined. The emergence of an ambiguous discourse of

vulnerability is considered and the contested benefits of assessments used to identify vulnerability and support decisions about how to use power are interrogated. The utility of vulnerability in prioritisation processes and in legitimating narratives is also investigated. Links between justifications for using power based on protecting the vulnerable and underlying concerns about legitimacy and managing competing interests emerge and are explored.

In chapter seven chief officers' claims to a right to exercise power based on consent are interrogated. The historical meanings of policing by consent are revisited and participants' accounts of policing by consent, including how they claim to gauge and build consent are assessed. How hazy stories of consent contribute to legitimating narratives is considered, as is the tension between a rhetoric of consent and the practice of coercion. Tales of withdrawn consent and an apparent construction of a consensual 'now' and a coercive 'then' are scrutinised. Participants' anxieties about legitimacy and competing demands and tensions between the three broad understandings of the right to exercise power voiced by participants are discussed.

Chapter eight investigates the final broad understanding of the right of police to exercise power, a justification founded in law and associated checks and balances. The distinction between legality and legitimacy is explored, including tensions between explanations for the use of power based on consent and in law. An apparent dissonance between the understandings based in law and checks and balances, and participants anxieties and frustrations with these mechanisms is interrogated. All participants viewed the law as a necessary but insufficient explanation of the right to exercise power and this insight is used to illustrate the links between the three broad understandings and the connections and contradictions are explored further in the last chapter.

In the final chapter the thesis is reviewed and the understandings that an archetypal contemporary chief officer might hold about the right of police to exercise power are presented and interpreted. The central significant research finding, and academic contribution made by this thesis is then set out; which is that these understandings are confused, conflicted and, of greatest concern, convenient. The implications of the thesis for the current and future state of policing are then discussed. Areas for further research are also considered. The thesis concludes with a call for a public debate about the purpose of policing and the right of police to exercise power.

## **Chapter Two**

### **Hobbes to Habermas: a review of legitimacy literature**

#### **Introduction**

This chapter explores theoretical explanations of legitimacy and the right to exercise power. The selection is inevitably and deliberately selective and draws on thinkers who have influenced contemporary understandings of legitimacy, particularly police legitimacy. The intention is to provide context that helps to answer the research question, ‘how do chief police officers in England and Wales understand the right of police to exercise power?’

The authors selected to illuminate legitimacy, or the ‘right to exercise power’, (Tankebe, 2013: 103) are Hobbes’ (1968 [1651]) and his understandings based on natural laws; Weber (1922-3) with concepts of legal, charismatic and traditional authority, focusing on the emphasis he placed on law and bureaucratic control; Durkheim (1992 [1957]) through his conception of obligation arising from shared values; and Mill’s (1962 [1861]) Utilitarian appeal to the greater good. The continuing significance of Utilitarianism, as well as of Durkheim and Weber, is evident in the Independent Police Commission Report (2013) and its supporting academic papers (Brown, 2014). The work of Beetham (1991) is examined, as he provides a clear (if contestable, in its assertion of universal application) structure for assessing claims to legitimacy. The continuing relevance for policing of Weber and Durkheim can be seen in procedural justice theory (Hough and Maffei, 2013), which is also examined. The chapter then considers more critical approaches to legitimacy, notably critiques provided by Gramsci (1992), Habermas (1976) and Foucault (1982). The risk that legitimacy is conflated with related concepts is also examined (Tankebe, 2013 and Bottoms and Tankebe, 2012) and the complexity of pathways to legitimacy is recognised. Apart from procedural justice theory and Foucault, the theoretical approaches set out above do not directly address policing, but they do provide a conceptual base from which to start an exploration of the supposed right of police to exercise power. The first of the authors to be discussed is Hobbes.



## Hobbes

In the *Leviathan* Hobbes (1968 [1651]: 189-201) framed the relationship between the sovereign and the individual in terms of natural laws and an implicit social contract. The notion of an implied agreement between those exercising power and those being governed or controlled and protected, arguably, provides a basis for the concept of policing by consent, an idea linked to police legitimacy and used to justify the right of police to exercise power (Mark, 1977, 1978, and Roycroft, 2016). This is an explanation for the use of police power that has frequently been deployed by practitioners, ‘traditionally, police officers have described the British system of policing as being one that exists by virtue of the consent of the community rather than by coercion’ (Oliver, 1987: 3). Consent and legitimacy are also central to the Labour Party instigated, Independent Police Commission Inquiry report (2013), *Policing for a Better Britain*.

Hobbes also contributes to the development of the concept of the rule of law, arguing that people are obliged to obey the law, provided the law is being upheld and the citizen is being protected. However, if the sovereign giving commands does so in a manner that ‘is not framed by the Justice’, which amounts to unfair and unreasonable demands but also encompasses a failure to protect the citizen (Hobbes, 1968 [1651]: 207 and Dyzenhaus, 2001) then there is no obligation to obey and such commands are illegitimate.

Hobbes’ focus on natural laws has contemporary resonance in proposals to legitimise policing by putting human rights at the heart of policing, in the Patten Report (1999), by senior police officers (Neyroud and Beckley, 2001) and more recently in the Police Code of Ethics (College of Policing, 2014). However, over-reliance on human rights as the core of legitimation ignores important aspects of police legitimacy, as the European Convention on Human Rights, The Human Rights Act 1984, and similar legislation in other jurisdictions, only address ‘a right that any individual has as a human being in the face of the state’ (Kamenka and Erh, 1978: 56). Thus, human rights are concerned with protecting citizens from the state and not from each other and a police service that does not provide the latter protection will not be viewed as effective. A lack of effectiveness, particularly when coupled with poor accountability, may serve to undermine legitimacy, particularly in low trust environments (Goldsmith, 2005).

The notion of human rights-based policing is also contested, ‘human rights offer little more than a minimalist safety net’ (Sanders et. al. 2010: 32). Albeit, their alternative ‘that enhancing freedom is what the system should be aiming at’ (Sanders et. al. 2010: 57) is also contestable and skates over the issues of whose freedom is being protected and avoids the complex issues of freedom from or freedom to and concepts of positive and negative liberty (Berlin, 1958).

Police legitimacy, as Goldsmith (2005) argued, is also rooted in police effectiveness in protecting citizens from each other and Tankabe (2009) adds a requirement to be responsive to public wants and demands. Effectiveness and public wants are addressed by Hobbes in the duty of the sovereign to protect the citizen from the perils of a war of all against all (Hobbes, 1651: 189-217). Thus, an explanation of the right to exercise power based on protecting people is also a key element of Hobbesian thought and this has been a continuing theme in narratives of police legitimization, from the foundation of the Metropolitan Police in 1829 onwards (Emsley, 2014: 12).

Key themes to be drawn from Hobbes are that legitimacy and the right to exercise power are inextricably linked, his appeal to natural laws support explanations of a right to exercise power based on a form of social contract (which includes a duty on the state to protect citizens and a reciprocal duty for citizens to obey) and in the context of British policing this might be reframed as a core component of policing by consent. Hobbesian natural laws provide a justification for the use of power based on this duty to protect and echoes of this approach can be seen in Weberian notions of legal authority and rationality.

## **Weber**

Weber’s paradigm for legitimacy based on legal, charismatic and traditional authority and his test for legitimacy, which sees the state as legitimate if people believe it to be so (Weber, 1922-23: 294-6), provides a potential template for debates about police legitimacy and the future of policing, a view that has been recently underlined by Bradford et. al. (2014). Giddens (1971: 156), drawing on ‘legal authority’, notes Weber’s requirement for a state to be ‘able successfully to exercise a legitimate monopoly on the use of force’. In view of the adversarial nature that such coercion represents Terpstra (2011: 8) proposes that ‘normative legitimacy’ for police should

be characterised by proportionate and low use of force, aimed at protecting individuals from the state and founded on ‘the rationality of law’. This may also be framed as legitimacy derived from the rule of law and links to Hobbes’ (1968 [1651]) notion of natural law.

Weber’s concept of ‘traditionalism’ also continues to have resonance, with the five experiments discussed by Van Toorn, Tyler and Jost (2011: 128) finding ‘participants wanted to believe that authority figures controlling their fate were benevolent’. This study is one of the few recent pieces of research using an experimental design to look at legitimacy. The potential human tendency to deference suggests a reciprocal relationship between authority and legitimacy. Therefore, there is an implicit suggestion that practitioners and policy makers might profit from a focus on preventing actions that undermine legitimacy, notably corruption and misconduct, another recurring theme in discussions of police legitimacy (Punch, 2009 and 2013). However, this suggested tendency to deference may also make it difficult to distinguish between active consent to the use of power - the right to use power being the central element of legitimacy (Tankabe, 2013: 103) – and ‘dull compliance’ (Carrabine, 2004) or Blake’s (1794) ‘mind forg’d manacles’, born of fear, weariness and habit.

Weber’s concepts of legal authority and rationality of law may also underpin the normative development of legitimate policing (Terpstra, 2011: 8) and can be seen in a Weberian concern to protect citizens from the disproportionate actions of the State, a theme which is apparent in the Independent Police Commission report, *Policing for a Better Britain* (2013) and its recommendations to refine the bureaucratic control of policing through a revised and merged Inspectorate of Constabulary and Independent Police Complaints Commission. Punch (2009) has also argued that, now, very senior police officers in the Netherlands and the UK tend to express views stressing proportionality and human rights, although he wonders about the extent to which this is translated into operational practice, particularly when buffeted by politics, and one might add by populism and the democratisation of policing (Loader, 2002), or perhaps more polemically, by the risk of a tyranny of the majority (Mill, 1962 [1863]: 3 and De Tocqueville, 2000 [1835]).

As with Hobbes, Weber's discussions of legitimacy demonstrate the centrality of the exercise of power to legitimacy. Weber takes a gloomy view of the predilection of those with power to use it improperly, hence a major theme (with resonance for contemporary policing) is his emphasis on law and on bureaucratic checks and balances to ensure that power is used for the benefit, not detriment, of citizens. Despite the different approaches and the arguable pessimism of Weber and optimism of Durkheim, they arguably provide the combined intellectual underpinnings of the prevalent contemporary thinking about police legitimacy (Hough and Maffei, 2013: 4).

### **Durkheim**

From the perspective of Durkheim, the state has an important role as 'the organ of moral discipline' (Durkheim, 1992 (1957): 72). Terpstra (2011: 8) develops this into a concept of 'social legitimacy', which 'provides a framework that justifies the police to citizens' ... 'and provides citizens a basis for trust in the police's motives and in their capacity to protect them'. Relationships of cooperation and communication between police and public as a source of legitimacy are central to this concept. This links to the importance of communication and dialogue in procedural justice theory, (Tyler, 1990, 2004 and 2011) and to the dialogic construction of legitimacy (Bottoms and Tankebe, 2012).

Social legitimacy is illustrated by Durkheim's framing of obligation, arising from shared morals and values, indeed 'the supreme good is communion with others' (Durkheim, 1986: 156). The challenge of aligning the values of police and public is significant, compounded by the apparent decline of homogeneity and questions of whose values and morals are the police aligned to (Murphy and Cherney, 2012), and which public and indeed which part of the police? However, the notion of shared values as a pathway to legitimacy, connected to obligation and compliance, is a key element of procedural justice theory (Myhill and Beak, 2008), which is returned to later.

Terpstra (2011: 7-8) also sees police from Durkheim's perspective symbolising:

a source of some powerful, efficacious and collective representations about, community, order, the distinction between good and evil and security and protection ... [nonetheless] ... the power to use force or coercion needs legitimisation and democratic accountability.

Such symbolism remains important for police legitimacy, notably in the media presentation of police, both factual and fictional and Reiner dwells on this in his analysis of the construction, deconstruction and reconstruction of police legitimacy (Reiner, 2010: 39-110 and 177-201). More recently Lee and McGovern (2014) have explored the impact of new media and the growth and professionalisation of police public relations approaches and noted its potential symbolic impact on police legitimacy. This critical Australian study also proposes links between risk and image management and the development of trust and legitimacy and highlights the role of senior officers and public relations/media staff in this process (Lee and McGovern, 2014).

Much earlier discussion of symbolic authority and legitimacy can be found in Machiavelli (1972: 203-4), who advised that whoever is in command when 'there is a riot should appear in public with the utmost elegance and dignity putting on the insignia of his rank, to make them more respected'. There is also a link to Weber's concepts of charismatic and traditional authority and legitimacy. Similar contemporary symbolism can be seen in the emphasis on mode of dress in public order policing, including the delegitimising impact of failure to wear insignia by some officers during the G20 protests in London in 2009 (Gravelle and Rogers, 2011). Stenning (2000: 330) also found both state and private police continue to use 'symbolic tools' to exert authority and use legitimacy. However, the Durkheimian theme that is picked up on most frequently in contemporary discussion of police legitimacy is the importance of shared values in building legitimacy (Independent Police Commission, 2013 and Hough and Maffei, 2013). The Independent Police Commission (2013) also employed Utilitarian approaches in their recommendations and Utilitarianism is explored next.

## **Mill**

Utilitarian thinking (Mill, 1962 [1861] and Bentham, 1977) is also a potential point of reference for debates about police legitimacy. Utilitarianism is evident in the Independent Police Commission Report (2013), notably in its revised, extended and updated Peelian Principles, ‘to create a police service that is professional, democratically accountable and which serves the common good’ (Independent Police Commission, 2013: 31). However, the difficulty Utilitarianism has in adequately defining the common good or ‘the greatest happiness for the greatest number that is the measure of right and wrong’ (Bentham, 1977: 393), is also reflected in the Independent Police Commission report. Policing is, arguably, intrinsically something that is not only done with people but to people and police will need to resort to the legitimate use of force (Reiss, 1971: 2). Police legitimacy and the legitimacy of the state is contested, debatably increasingly so in a less homogenous and more unequal society (Habermas, 1976). In his later writings Bentham also recognised that inequality and the potential for illiberal majorities posed challenges for Utilitarianism (Burns, 2005). Perhaps the question that should be posed more forcefully in terms of Utilitarian perspectives of police legitimacy is, ‘good for who?’ However, Utilitarian thinking can be interpreted as influencing the duty to protect people and property that has been a persistent legitimating narrative in British policing, from Rowan and Mayne in 1829 (Emsley, 2014 and Metropolitan Police 1985), through the development of a myth of Peelian Principles in the mid twentieth century (Reith, 1943 and 1956 and discussed by Emsley, 2014) to the *Policing Vision 2025* (APCC, 2016: 4) produced by the National Police Chiefs’ Council (NPCC) and the Association of Police and Crime Commissioners (APCC). The main themes emerging from Hobbes, Weber, Durkheim and Mill can arguably be seen in Beetham’s (1991) study of legitimacy.

## **Beetham**

Beetham’s (1991, 1993) approach to legitimacy has been drawn on within policing literature (Bottoms, 2002). Beetham (1991: 15-16) argues:

Power can be said to be legitimate to the extent that:

- i) It conforms to established rules

- ii) The rules can be justified by reference to beliefs shared by both dominant and subordinate, and
- iii) There is evidence of consent by the subordinate to the particular power relation.

Beetham does not envisage these three dimensions as alternatives, ‘since all contribute to legitimacy’ (ibid. 16) and he views them as constituting ‘basic criteria for legitimacy in all historical societies, past and present’ (ibid. 21). Using these dimensions accountability mechanisms can be construed as processes to test whether legitimacy is present and through dialogue they may help surface shared values and bolster legitimacy.

Beetham’s (1991) approach can be challenged as his claim to universal application is dubious. In the police context a force could be viewed as legitimate by many, therefore meeting Weber’s (1922-23) main criteria for judging legitimacy (that a state or institution or state is legitimate if people believe it to be so) and Beetham’s (1991: 15-16) own third dimension (consent), despite breaching Beetham’s first dimension of legitimacy by failing to comply with rules and laws (op. cit.); a point illustrated by Klockars’ (1980) ‘Dirty Harry’ problem. Similarly, effectiveness in providing security may outweigh considerations of propriety, particularly in relatively insecure and low trust environments (Sargeant, Murphy and Cherney, 2014; Homolova, 2014; and Tankebe, 2009). However, Beetham provides a framework for researching legitimacy that encompasses the major themes that emerged from Hobbes, Weber, Durkheim and Mill; namely that the right to exercise power is the central issue to be considered when examining legitimacy, that rules and laws are a key component of legitimacy, as are shared values, and when asking whether an institution is legitimate it is vital that evidence of consent is examined.

### **Procedural justice**

The prevalent current approach to the study of police legitimacy is procedural justice research, inspired and informed by the work of Tyler (1990, 2004 and 2006). This section outlines relevant aspects of procedural justice research and argues that this thesis meets a need for an additional interpretative and critical approach that explores

understandings and social constructions of police legitimacy and the right to exercise power.

Procedural justice research is dominated by projects that are arguably influenced by positivism, utilising quantitative survey-based studies of public perceptions of police legitimacy and its relation to linked concepts. Albeit, causality is not always clear, and the dominance of approaches based on surveys of perception and multiple regression analysis within procedural justice studies, in the absence of greater triangulation, can be questioned, a critique that Shalev (2007) directed at international comparative studies. Procedural justice research may also be argued to suffer from difficulties in measurement, with perceptions of confidence frequently being used as a proxy measure for legitimacy. Thompson's (2010) Parliament Paper illustrates the difficulties in comparing British Crime Survey (BCS, now Crime Survey of England and Wales [CSEW]), MORI, World Value Survey and Public Attitude Survey results over time and with each other. Those involved in procedural justice research are frequently aware of the potential gaps and areas for development. Examples of such reflexivity (Bordieu and Waquant, 1992) include Sindall et. al. (2012) highlighting the limitations of British Crime Survey data within their research, Tankebe (2013) and his observations on the conflation of concepts and Jackson et. al. (2012) noting the limitations in establishing causality.

However, this thesis is not intended to be overly critical of procedural justice research and the potential positivism identified is noted for descriptive, not pejorative purposes<sup>1</sup>. Rather this research makes an alternative, and potentially complementary, contribution to the body of knowledge about police legitimacy.

The core propositions of procedural justice theory are:

- Trust in justice leads to legitimacy, which leads to compliance.
- Trust in institutions of justice is built on the role of procedural justice, rather than outcome justice, in shaping legitimacy.
- Institutions of justice need to pursue fair and respectful processes, in contrast to outcomes, as the surest way to build trust and thus legitimacy and compliance.

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<sup>1</sup> Hacking (1983: 43) noted that positivism had, for some, almost become a term of abuse.



- It does not pose the traditional criminological question, ‘why do people break the law’? Rather it asks, ‘why do people obey the law’? (Adapted from Hough and Maffei, 2013).

The gaps in knowledge left by procedural justice research are illustrated by examining a large contemporary procedural justice research project, the New European Crimes and Trust Based Policy, generally referred to as Fiducia (2014). Fiducia is funded by the European 7<sup>th</sup> Framework and is internationally collaborative, with 13 countries and 14 institutions directly involved. The research is positivist in nature and is dominated by an approach based on quantitative analysis of attitudinal measurements and cross-sectional surveys. It is also naturalist in using statistical methods and tests of validity commonly applied in natural sciences. The approach seeks to both establish and test general laws, broadly in line with propositions set out by Tyler (2006) and aims to do this in an objective manner. The research explicitly seeks to challenge punitive criminal justice approaches, which it sees as potentially ideologically driven, rather than backed by evidence (Fiducia, 2014, European Policy Brief).

The attempt to establish general laws within procedural justice research has been subject to challenge as not catering for the complexities of a diverse world, where ‘procedural justice may be an insincere attempt to win cooperation’ (Murphy and Cherney, 2012: 193). It has also been suggested that it is not applicable in the developing world, in environments where security is a greater concern than issues of trust and fairness (Goldsmith, 2005).

Fiducia is but one example of broadly positivist and quantitative publicly funded research in this arena. The Campbell Collaboration (2018) has conducted meta-analysis funded by the National Police Improvement Agency (NPIA), George Mason University and the University of Queensland and the ARC Centre for Excellence in Policing and Security (Mazerolle et. al., 2013). This approach makes implied claims to best knowledge and adopts methods used heavily in the natural sciences and medicine (Mazerolle et. al. 2013). Another relatively recent quantitative study of compliance was also funded by the NPIA (Jackson et. al. 2012).

The Fiducia project has a government and law enforcement focus and is explicitly targeted at the needs of criminal justice practitioners, policy makers and politicians, as is the Campbell Collaboration work. This body of positivist inclined research is

likely to be attractive to this audience as it holds out the prospect of being cheaper and more effective than instrumental rational choice models based on punishment and surveillance. It also has the potential benefit of appearing to be more benign and liberal than some existing criminal justice approaches (Tyler, 2006a), such as the penal state approach discussed by Garland (2001 and 2013). In addition, through its focus on legitimacy, it may assist authorities and governments in mobilising populations and retaining reservoirs of support (Tyler, 2006a: 377-378). Rock (2002: 67) has argued governments are prone to fund research that may support the status quo and it is perhaps not surprising that Fiducia and similar projects, with their implied promise of more effective order maintenance, should attract political support.

An example of the impact such research has made on policy development is to be found in *Policing for a Better Britain* (Independent Police Commission, 2013), which is permeated with insights from procedural justice research, as shown by the influence of a position paper prepared for the Commission by Bradford, Jackson and Hough (2014). The report makes recommendations with clear implications for police legitimacy and was a catalyst for renewed discussions about the policing mission and would probably have been more influential if the Labour Party (who commissioned the Report) had won the 2015 or 2017 general elections.

Procedural justice research has not critically examined and sought to interpret the understandings of legitimacy held by individuals who may play particularly influential roles in constructing legitimacy, such as chief police officers. Nor has procedural justice research considered what motivates such influential individuals or addressed what their views about legitimacy and the right to exercise power makes them do and what the implications of such actions might be for wider society. Similarly, policy initiatives, such as *Policing for a Better Britain*, have not critically considered the role that chief police officers play in constructing legitimacy. This thesis helps fill this lacuna.

Whilst procedural justice theory and the works of Hobbes, Weber, Durkheim, Mill and Beetham provide vantage points from which to view understandings of the right to exercise power, it is also important to consider more critical voices that question these conceptions of legitimacy, particularly in the context of an unequal society.

## Critical Perspectives

Marxism, and wider critical approaches, provide challenges to the concepts of legitimacy arising from the works of Hobbes, Weber, Durkheim, Mill, Beetham and Tyler. Marx and Engels (1848: 53) claimed that 'political power, properly so called, is merely the organised power of one class for oppressing another'. Gramsci (1992) in confronting the absence of revolution in developed economies, refines this with a notion of hegemony that denotes 'the ideological domination of one social group over others: the exercise of a degree of intellectual and moral leadership over subordinates that diminishes the need for direct coercive measures to ensure compliance' ... and ... 'the predominance of consent over coercion' (Martin, 1997: 38). From this perspective it has been suggested that 'the police institution is situated at the crux of the contradictions of the advanced capitalist state' (Brogden, 1987: 237) and a similar, if less explicit, narrative is put forward by Sanders et. al. (2010) and raises the important issue of legitimate, in whose eyes?

Foucault's (1982) analysis may also be used to undermine justifications for the exercise of power and claims of legitimacy, and he directly addressed policing:

The police force was not invented only for maintaining law and order, nor for assisting governments in their struggle against their enemies, but for assuring urban supplies, hygiene, health and standards considered necessary for handicrafts and commerce (ibid. 784).

Foucault's concept of biopower, built on the types of technologies focused on the training of bodies' including surveillance and monitoring and the proactive creation of 'the other' and of a 'regime de savoir' (Foucault, 1982 and 1975 [1977]) and the power of discourse to secure domination (Foucault, 1971) may also be relevant to continuing debates about police legitimacy.

Habermas (1976) also cast a critical eye over legitimacy. He argued that institutional communications in liberal democracies tend to be systematically distorted to reinforce discourses, or world views, that reinforce what is, in effect, a false consent to the exercise of power. Real consensus about legitimacy, he maintains, can only be achieved when there is an equality of power within the dialogue, whilst this equality is an ideal he asserts that an approximation should be strived for if a legitimisation crisis is to be avoided. Such a crisis of legitimacy will be precipitated when 'members of a

society' believe that change is vital and 'feel their social identity threatened' (ibid. 3) and the crisis can be recognised when the state 'does not succeed in maintaining the requisite level of mass loyalty' (ibid. 146). Habermas also provides a critique of conceptualisations of legitimacy founded on compliance with the law, as law is, in his view, established by the elites that run the capitalist state, even if in liberal democracies, or 'Old European' states, they are competing elites (ibid. 143).

Loader (2002) also notes the imbalance of power in society, including the asymmetrical power used against the disadvantaged by police, particularly towards religious and racial minorities; although he did not pay attention to the asymmetrical services, debatably, provided to the disadvantaged who are disproportionately victims and in need of police protection; notably, in the context of his paper, to those subjected to people trafficking and damaged by the illegal drugs trade. Similarly, Reiner (2013: 166) identifies the need to focus again on the impacts of the 'class repression element of the police role'. Loader (2002) and Reiner (2013) arguably illustrate the difficulty in framing police legitimacy and the complexity created by different contexts and variations in views of legitimacy, contingent on the position and power of the person exercising power and the subordinate, and of the observer.

Whilst some may contend that Marx's analysis of class and power has not survived the test of time, particularly when subjected to a Popperian analysis (Popper, 1959 and 1966) a continuing focus on power relationships may shed light on the risks of majoritarianism for police legitimacy. This includes the potential perils of elective dictatorship (polemically posed by Lord Hailsham, 1976) or the tyranny of the majority warned of by Mill (1962 [1863]: 3) and De Tocqueville (2000 [1835]). Populism and the democratisation of policing could also threaten civil liberties and police legitimacy, through the impetus it provides to disproportionate action and a simplistic approach to the outcomes of police activity; arguably heightened by the continuing influence of new managerialism (Loader, 2002, Sanders et. al. 2010, Van Sluis and Cachet, 2007).

The key message, for this thesis, drawn from these critical voices is the importance of rigorously interrogating discourses of legitimacy, including the, 'taken - for - granted convention' (Harre and Bhaskar, 2001: 28) that the police have a right to exercise power. The need to critically examine discourses of police legitimacy, particularly

those related by chief police officers, is arguably heightened by recent changes in the policing environment.

### **Changes in the policing environment**

As identified earlier (and discussed in greater depth in the next chapter), previous researchers who looked in detail at chief police officers did not focus on these officers' understandings and constructions of police legitimacy (Reiner, 1991; Stallion and Wall, 1999; Savage, Charman and Cope, 2000; Isenberg, 2010; Caless, 2011; Fisher, 2012; and Roycroft, 2016). These studies provide interesting and illuminating insights but are, arguably inevitably, snapshots in time. Hence, this thesis revisited chief police officers and investigated their understandings of police legitimacy and of the right to exercise power, a timely endeavour as the policing environment has changed since previous research was undertaken.

The Police and Social Responsibility Act 2011 (Home Office, 2011) made significant changes to police governance, including the abolition of police authorities and the introduction of police and crime commissioners, implemented in 2012. Further, the Coalition Government emphasised crime reduction over all other policing priorities and reduced central government funding for police by 20% (May, 2010). The implications of these changes for understandings of the right of police to exercise power required further exploration.

There have been a range of further changes made to policing that may have impacted on chief officers over the last six years. It is not always clear who the changes were for and what the impact on legitimacy might be but, other than Roycroft (2016),<sup>2</sup> no academic study has taken place looking at police chief officers since these changes were made. In 2012 the National Police Improvement Agency (NPIA) was replaced by the College of Policing, with a wider remit than the NPIA (Home Office, 2012), taking on functions formerly discharged by individual chief officers and governed by ACPO nationally, notably in leading as the contestably professional (Holdaway, 2017) voice of policing and responsible for the development of police business areas,

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<sup>2</sup> Roycroft's (2016) book is considered in the next chapter, his research has little to say about legitimacy and offers limited or no interpretation, rather he uncritically reports what chief police officers and PCCs said about a wide range of, often unconnected, issues.

covering most operational issues, including policing of public disorder, police use of firearms, roads policing, serious and organised crime and terrorism and local policing. The main impact of these changes is not primarily about training, it is about the governance of policing. Another notable change arose from the review of the Association of Chief Police Officers (ACPO) conducted by retired General, Sir Nick Parker (2013), which recommended slimming down ACPO and replacing it with a revised body. This led to the demise of ACPO and the foundation of the National Police Chiefs' Council (NPCC) in 2015.

There have also been a range of, often seemingly unconnected, controversies around policing, that the Independent Police Commission (2013) claimed were unusually prevalent (albeit they neither conducted or presented any comparative analysis). Such controversies include continuing concerns about the Hillsborough tragedy (Hillsborough Independent Panel, 2012), the Andrew Mitchell 'plebgate' affair in 2013 (Wright, 2013) and anxieties about crime recording practises (Public Administration Select Committee, 2014).

Another change was the demise of the Serious and Organised Crime Agency and its replacement by the National Crime Agency in 2013 (NCA, 2014). The Crime and Courts Act, 2013 empowers the NCA Director General to 'direct chief officers of a police force in England and Wales' ... 'to undertake a specific operational task or to assist another partner of the NCA with the task' (NCA, 2014). The NCA has also taken on a role, effectively at the direction of the Home Secretary (whom the Director General is directly accountable to), in conducting investigations in forces and into forces. The impact of these changes is not clear.

It is probably only safe to say that there has been a lot of recent change and it is not always obvious what it means, or who the changes were for or what they represent. However, this thesis demonstrates that some of these changes have influenced the perceptions, attitudes and understandings that chief police officers hold about the supposed right of police to exercise power. The interrogation and interpretation provided by this research of how such understandings motivates chief officers and may make them act, is worthwhile and adds to academic knowledge.

## **Conclusion**

This chapter identified four themes that were explored by this research. First, this thesis focused on the right to exercise power, which is at the heart of discussions of legitimacy. Second, how consent is constructed and gauged was critical, as evidence of the consent of the subordinate to the exercise of power is a recurrent and convincing theme in the literature. Third, the role of rules and laws in building legitimacy was repeatedly returned to and this was examined. Fourthly, the notion of broadly shared values, or morals, between those exercising power and those over whom power is exercised was frequently identified as a key element of legitimacy and was investigated by this thesis. In addition, the more critical voices that were considered stressed the importance of interrogating the 'taken - for - granted - convention' (Harre and Bhaskar, 2001: 28) that the police have a right to exercise power and recent changes in the policing environment have heightened this need. This critical realist research did this by examining how apparently key actors in the construction of police legitimacy, chief police officers, understand this supposed right. To achieve this, it was important to understand the contributions that other researchers have made to gaining knowledge about chief police officers and this is the task of the next chapter.

## **Chapter Three**

### **Reiner to Roycroft:**

#### **A Review of Chief Police Officer Literature**

##### **Introduction**

This chapter builds on the four broad themes that emerged from the review of legitimacy literature and provides context supporting the interpretation of data gathered for this empirical research. Much of the published research in this area is dated and, whilst some findings and understandings may still be relevant, they need to be placed in the context in which the research was conducted. The studies examined include Reiner (1991), Stallion and Wall (1999), Savage, Charman and Cope (2000), Loader and Mulcahy (2001 and 2001a), Caless (2011), Fisher (2012) and Roycroft (2016). There are also two international studies (Isenberg, 2010, and Caless and Tong, 2015) but the different policing, political and cultural contexts limits their relevance to this research.<sup>3</sup>

##### **Structure of discussion**

The literature is reviewed chronologically over four periods: 1981-1997, the Brixton disorders to the end of the Conservative Government; 1997 – 2003, the first six years of the New Labour Government, which saw developments in the managerialist approach of the previous government and, consequently, in styles of police performance management; 2003 – 2010, from *Policing: Building Safer Communities Together* (Home Office, 2003), a period characterised by a drift away from an enforcement focus to greater attention to public confidence and neighbourhood level concerns, ending with the 2010 election; and 2010 – 2017, the Coalition and Conservative Governments, with radical changes to police governance and, arguably, a return to law and order rhetoric and a focus on crime reduction and social control (Turner, 2014: 14 and Reiner, 2013). Alternative historical periods could have been selected, indeed Brain (2010) adopted different intervals in his history of policing

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<sup>3</sup> A discussion of this international literature is provided in Appendix A.



since 1974. However, Brain (2010: 432) noted that ending his history in ‘the middle of 2009 is as good a place as any’. My starting point and intermediate junctions can be viewed in the same light, there is a rationale for the choices made but other options could have been justified. Clearly there are overlaps between the historical periods used in this chapter and themes persist across the whole timeframe under review. Nevertheless, the structure adopted provided a functional framework for organising the material that needed to be examined and placing it in its historical context. This structure enabled recurring themes to be identified and facilitated attention being drawn to continuities and discontinuities that may impact on the understandings of the right of police to exercise power held by chief police officers in England and Wales.

## **Policing 1981 – 1997**

### *Context*

This period starts with the Brixton disorders and its aftermath and includes industrial turmoil, notably the miners’ strike. It also, arguably, saw the genesis of new public management in policing, with Home Office Circular 114/1983 (Home Office, 1983) and its mantra of economy, efficiency and effectiveness. Later the Police and Magistrates Courts Act 1994 made changes to the accountability mechanisms introduced by the Police Act 1964. The 1994 Act strengthened the position of the Home Secretary in setting national objectives, and by introducing lay members to police authorities weakened the influence of local government, as represented by councillor members (McLaughlin, 2007: 183-184).

The main source for considering the potential understandings held by chief officers about legitimacy and the right of police to exercise power in this period is Reiner’s (1991) seminal book *Chief Constables*, research for which was conducted in 1986 and 1987. He interviewed 40 of the then serving chief constables, 93 per cent of the total. A theme through the work is the pressure for change following the 1981 and 1985 disorders and the political and policing response to the Scarman report into the Brixton Disorders (1981), including developments in community policing.

More recently Reiner has addressed the legitimacy of the police directly, noting that ‘The craft of effective policing is to use the background possibility of legitimate

coercion so skilfully that it does not need to be foregrounded' (2013: 166). The legitimacy of policing and its construction, deconstruction and reconstruction was also considered at greater length by Reiner in *The Politics of the Police* (2010: 67-110). However, *Chief Constables* does not directly inquire into the issue of legitimacy or explicitly seek to reveal the stories chief constables told themselves to justify the exercise of power.

### *Accountability*

The role of the police in England and Wales in the conduct of the miners' strike of 1984 to 1985 was a fresh issue when Reiner's interviews were conducted. This heightened the relevance of discussions of police accountability and governance. These matters were highlighted by Margaret Simey (1988) when recounting her work as chair of the Merseyside Police Authority and of the tensions between the authority and the chief constable, Sir Kenneth Oxford. McLaughlin (1994) gives another local account of fractured relationships and contested accountability, in his discussion of the interactions between the Greater Manchester Police Authority and the chief constable, Sir James Anderton.

Nationally the focus on accountability was heightened by Labour and Liberal Democrat proposals for changes in policing governance, with the Labour opposition proposing changes, which many chief constables interpreted as removing policy making responsibility from chiefs, with the potential to undermine the 'vaunted independence' of chief constables (Reiner, 1991: 275). The Liberal Democrats advocated the introduction of elected police authorities; a policy position that persisted and still featured in their 2010 election manifesto.

Discussion of accountability dominated much of the policing debate with police chief officers, such as Sir Robert Mark (1977 and 1978) and Ian Oliver (1987), broadly rejecting the types of reform being advocated by the Labour Party and Liberals and later Liberal Democrats. A more critical approach to accountability was advocated by some academics (Jefferson and Grimshaw, 1984). Therefore, it is not surprising that Reiner (1991) asked questions directly about accountability, whilst not overtly addressing legitimacy.

However, Reiner did discuss legitimacy in relation to chief constables' broad acceptance of the legitimacy of central government and of the Home Office, derived from a democratic mandate. Although, in the eyes of most chief constables, a greater legitimacy was conferred on the Home Office through their perception that:

much of its policy is the product of consultation and collaboration with HMI [C] and ACPO, acting as the conduits of professional wisdom. Where this consensual process of policy formulation does not occur Home Office advice is often seen as lacking legitimacy and resented. (Reiner, 1991: 271)

Reiner noted the range of different attitudes towards police authorities held by chief constables. Police authorities were envisaged by the 1962 Royal Commission and the Police Act 1964 'As the legitimate expression of popular will in particular areas' (Reiner, 1991: 249). However, chief constables were resistant to any move into policy making by police authorities, 'as if policing had a sort of sacred character which rendered it too vital to the social fabric to be subject to the rough and tumble of profane party politics' (Reiner, 1991: 259). Chief constables 'commonly claimed that they were more in touch with the genuine wishes of the local people than their nominal political representatives' (Reiner, 1991: 259). However, Reiner found that most chiefs did 'seek to cultivate good relations with their authorities, this is seen as a matter of educating them into the professional viewpoint' (Reiner, 1991: 284). Reiner (1991: 300) judged that, despite some reservations 'Chief constables are fundamentally satisfied with the structure for accountability'. This might be interpreted as senior police leaders being content with a mechanism that did not allow democratic accountability to intrude unduly into the business of policing.

Reiner's (1991) discussion of accountability has relevance to debates about police legitimacy but whilst accountability and legitimacy are closely connected concepts, they are not interchangeable. Bottoms and Tankabe (2012) see legitimacy as arising from a process of dialogue between those exercising power and those over whom it is exercised. Day and Klein (1987: 244) took a similar view, noting that 'accountability is brought about not only by institutions or techniques but also by dialogue'. Beetham (1991) also sees accountability as a mechanism that can promote dialogue to identify shared values and build legitimacy, as well as being a process for testing whether

legitimacy is present. Therefore, mechanisms for accountability, and for consultation<sup>4</sup> may be part of a dialogue that develops and supports legitimization.

However, whilst supporting legitimacy, effective accountability mechanisms do not guarantee it. As discussed in chapter two, it is possible to picture a police force that is widely viewed as legitimate, even where accountability mechanisms and structures are weak. This is particularly so if the police force is effective, notably in terms of keeping people safe, or at least if the force is perceived to be competent in doing so. This may be particularly relevant in low trust environments. Sargeant, Murphy and Cherney (2014) looking at the experience and perceptions of Vietnamese and Indian ancestry Australians, and Homolova (2014), studying the Czech Republic in 1999 and 2012, and Tankabe (2009) conducting research in Ghana, found that police effectiveness was the major determinant of legitimacy. The robustness of accountability mechanisms and issues of procedural fairness did not appear to be primary considerations for those living in these environments.

Savage, Charman and Cope (2000) explored the perception, of some, that during this period ACPO (the Association of Chief Police Officers) was become increasingly coherent and influential yet was insufficiently accountable. Possible catalysts for this change included the benefits, as perceived from a government and police perspective, of the coordination of resources to tackle public disorder, major crime investigation, terrorism and industrial disputes. One example of this was the development of the National Reporting Centre in response to the 1984 miners' strike. Chief officers also saw a need to be coherent and cohesive to tackle narratives they were uncomfortable with, including accounts arising from within policing, notably from the Police Federation (Savage, Charman and Cope, 2000).

Stallion and Wall (1999: 26) also highlight the growth in complexity of policing and the increasing range of demands on police, which is visible in the 'quantity and quality of the decisions that have to be made by chief constables'. This may be viewed as an incentive for greater collaboration and consensus in the chief officer voice.

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<sup>4</sup> Consultation became a statutory responsibility for police authorities, and in the Metropolitan Police District for the Commissioner, under Section 106 of the Police and Criminal Evidence Act, 1984. Consultation may be viewed as a contested concept, as whilst it can be meaningful it may also be manipulative or tokenistic.

The discussion of a, contestably (Holdaway, 2017), emerging professional approach to policing, as discussed by Day and Klein (1987) also raises issues for accountability, as it may lead to a claim that only professional peers ‘can judge their conduct and performance’ (Day and Klein, 1987: 1). This contributes to Day and Klein’s judgment that police accountability was ‘complex in theory’ ... ‘more complex in practice’ (ibid. 105). Alternatively, arguments about increasing complexity and professionalism voiced by chief officers could be construed as a convenient cloak worn to evade scrutiny (Savage, Charman and Cope, 2000).

Discussions of accountability and its role in promoting legitimacy may also be linked to widely voiced appeals to the benefits and historical roots of ideas about policing by consent. Although, the validity of these historical accounts is heavily contested (Storch, 1975 and Lentz and Chaires, 2007).

### *Policing by consent*

Policing by consent might be viewed as a legitimating narrative and this can be seen in Reiner’s *Chief Constables* (1991) in his participants broad acceptance of this narrative, which can be interpreted as one of the stories that police chief officers use to justify their exercise of power. Reiner (1991: 108) sees this view as fitting into, ‘The characteristic “wide account” of the police function’ as illustrated by one of his chief constables:

The old objects of police remain pretty valid and good as set out in 1829 ... I very much agree with the Metropolitan Commissioner’s view on a sort of contract with the public and with other agencies (Reiner, 1991: 109).

The Metropolitan Commissioner being referred to was probably Sir Kenneth Newman. Newman reinforced a narrative of consent, with reference to Peel and to the instructions given by Rowan and Mayne in 1829 (the first Metropolitan Police commissioners). Newman’s view was set out in *The Principles of Policing and Guidance for Professional Behaviour*, issued to all Metropolitan police officers in 1985, (Metropolitan Police Service, 1985).

In *The Power of Legitimate Naming* Loader and Mulcahy (2001, 2001a), were not seeking to contribute to the ‘small but burgeoning “chief constables studies” literature’

(Loader and Mulcahy, 2001: 42), rather they examined the development of a post-war narrative to legitimate police as social commentators, even if only in their own eyes. The study analysed phases in the increased engagement of chief constables with the media and public relations, from quiet but locally influential chiefs to more prominent and outspoken chiefs from the 1970s. However, Loader and Mulcahy (2001a: 225) noted that since the late 1980s a 'more tempered sense of "when it is best to speak"' had developed. The authors comment on the apparent relationship between cultural and social change and the voice adopted by senior police officers. This more tempered and coherent voice arguably supported a narrative of consent and enhanced police legitimacy.

*Community policing and the 'broad' Vs. 'law enforcement' view of policing*

When Reiner conducted his research, there was, within senior policing circles, much discussion of and advocacy for variants of community policing, in part prompted by the disorders of the early 1980s and the Scarman report (1981). John Alderson, then Chief Constable of Devon and Cornwall, was a vocal proponent (Alderson, 1979 and 1984). Although, Alderson was a figure that most chief constables wished, certainly publicly, to distance themselves from following his influential but contentious (in the eyes of his peers) input into the Scarman inquiry (Reiner, 1991: 105-107 and Benyon, 1984).

Reiner found that 'the dominant philosophy of policing expressed by chief constables is a broad community-oriented one deriving from the influence of Scarman' (Reiner, 1991: 125). However, it was clear that 'a substantial minority of chiefs, especially in the counties, see policing in narrower law enforcement terms' (Reiner, 1991: 125).

The relevance of community policing to legitimacy lay in the perceived benefits of community policing in building support and trust for policing amongst the public, although the link to legitimacy is not clearly articulated by Reiner (1991) or by the chief constables he interviewed. Whether the broad view of policing described by Reiner can be interpreted as inferring a continuing preferred legitimating narrative is an issue that is discussed in chapter seven, when discussing policing by consent and the role that neighbourhood policing (arguably a relatively recent rebranding of community policing) might play in building and gauging consent to the use of police

power. Similarly, whether a political drive focused on crime reduction and crime fighting generates a different narrative is considered in chapter seven, when examining tales told by chief officers of withdrawn consent, notably linked to new public management and associated quantitative approaches to police performance management.

Community policing is a continuing thread within the chief officer literature across this period. Whilst community policing is ill defined, there is a notion of it as a range of police activity, with a local focus, that helps police to understand public needs and wants and attunes police to the norms (or range of norms) locally. Community policing is also viewed as a process, or processes, that contributes to public understanding of the policing task and its challenges. Hence supporting the dialogic legitimacy proposed by Bottoms and Tankabe (2009).

How community policing deals with potentially competing and contradictory societal norms in a diverse society is not always clear. There is, within many of the responses elicited by Reiner (1991: 193-221), an assumption that chiefs were attuned to the public mood and norms and, whilst there is an acknowledgment of other perspectives, these are largely viewed as atypical of the population and potentially threatening to societal order. It is striking how many of Reiner's respondents felt that their local links and role gave them a privileged understanding of the public, which negated the need for chief officers to become reliant on interpretations of public demands provided by, what many of them viewed as, partisan politicians (Reiner, 2010: 249-300).

Reiner's finding of two philosophies of policing (the broad view, which values community policing, and a narrower enforcement view) poses questions about the relationship between how chief officers understand the purpose of policing and police legitimacy; this is explored in chapters six to eight. The opinion of many of Reiner's chief constables that they had a privileged standpoint, which enabled them to understand and respond to public policing needs, without undue interference from politicians, can be linked to discussions of constabulary independence, or as it is now known, operational independence<sup>5</sup>.

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<sup>5</sup> 'Constabulary independence' and 'operational independence' are terms that describe the same concept, although the expression 'constabulary independence' is now rarely used and the nature of the concept and its impact on policing practice has changed over time (as is discussed in this chapter and in chapter eight).

### *Constabulary/Operational independence*

The research for Savage, Charman and Copes' *Policing and the Powers of Persuasion* (2000) was undertaken in the mid to late 1990s and bridges the first two periods under review (1981 -1997 and 1997 -2003). The authors conducted on the record interviews with prominent serving and retired police chiefs, including presidents of ACPO, selected politicians and a larger set of anonymised interviews with a cross section of chief officers.

Discussions of the validity of the notion of constabulary independence (now more commonly framed as operational independence) were a subject of political and academic, if not popular, debate and the chief officers interviewed subscribed to the concept. Savage, Charman and Copes (2000) study includes a critical assessment of constabulary independence, which the authors viewed as a potential shield to protect chief constables from proper scrutiny and they argued that such independence should be challenged as a doctrine and as part of 'chief officers discourse' (ibid. 207).

This period also gave rise to the Police and Magistrates Courts Act 1994, which granted additional powers to the Home Secretary to set priorities and give guidance, which has been viewed as one of the first legislative steps to weaken the claim to constabulary independence, that was arguably inherent in the Police Act 1964 and in the findings of Lord Denning in *R. v. Metropolitan Police, ex parte Blackburn* (McLoughlin, 1997 and Denning, 1968).

Constabulary independence is arguably an obstacle to legitimization; indeed Savage, Charman and Cope (2000) saw it as a justification used by chief constables for marching out of step with police authorities, the Home Office and colleagues. They also viewed it as contributing to an 'accountability-deficit' (ibid. 208) and this might play a part in a decline in legitimacy. However, a contrary argument can be constructed, demonstrating benefits from such independence in distancing policing from partisan politics and in mitigating public anxieties about a big state and untoward political interference in operational police decision making. The latter view influenced the recommendations of the 1962 Royal Commission and the Police Act 1964. The development of new public management approaches from the 1980s onwards may be viewed as part of a continuing process undermining constabulary independence, for good or ill.



### *New public management and police performance management*

Stallion and Wall's *The British Police: Police Forces and Chief Officers 1829 – 2000* (1999) provides historical insights into chief police officers and the development of forces, and the context varies depending on the period being examined. The research is primarily based on an examination and analysis of historical records. However, the first chapter provides context for the period under review (1981 – 1997). It highlights the growing influence of new public management, or new police management, on the police service; which the authors identify as a social market philosophy that seeks to make public organisations more economic, efficient and effective, as embodied in Home Office Circular 114/83 (Stallion and Wall, 1999: 25). Writing not long after Home Office Circular 114/83, Day and Klein (1987: 246) noted problems in introducing new public management policies in the public sector, particularly in the policing sphere, due to 'the heterogeneity, complexity and uncertainty about the relationship between means and ends'.

New public management may also impact, indirectly, on understandings of police legitimacy through a highly quantitative approach to police accountability and a changing relationship between the overseen and overseers. It also has, potentially unintended, consequences for legitimacy in terms of police/public relationships, as the measures introduced arguably reflect, a neo-liberal social control and enforcement agenda and a 'deep asymmetry in the social distribution of its [policing's] benefits and burdens' (Loader, 2002: 134 and discussed by Turner, 2014).

New public management may also reflect a 'discourse of "effectiveness" that evinces a strong tendency to trump considerations of civil liberty' (Loader, 2002: 137). Loader (2002) also argues against majoritarianism and reliance on public acceptance of policing practices by most people as a proxy measure of legitimacy. Albeit his contention that the democratisation of policing 'that cement[s] processes of securitization by enabling voice to be given to the *untutored prejudices* [my emphasis] and anxieties of European citizens' vis-a-vis the threat posed by 'alien' or 'criminal' others' (ibid.143), might be criticised for its elitist tone.

A significant aspect of this quantitative approach to management lies not only in the relationship between oversight bodies and chiefs but also between chiefs and other police ranks. Targets for forces and chief officers heralded quantitative performance

management regimes within police forces, such as the Compstat model introduced by Commissioner Bratton in New York and Los Angeles (Bratton, 1998) and adopted, in various forms, in many forces in England and Wales. Neyroud and Beckley (2001: 122) raised ethical concerns about, ‘the performance culture imposed by tight control mechanisms [that] will not be supportive of efforts towards human rights’. Their argument (ibid. 94-122) echoes observations from Day and Klein (1987) that the complexity of policing is compounded by the inadequacy of performance data, rendering the approach highly questionable. Even those advocating highly quantitative performance regimes recognised that understanding what might be viewed as ‘good’ in policing terms was fraught with difficulty (Audit Commission, 1990: 4).

*Products of their time? Social origins, education, career paths, social and policing philosophies*

Reiner was curious about the type of people chief constables were, their origins, career paths, social and policing philosophies, their strategic activities to achieve their objectives and their approach to accountability. He also inquired about how they related to other bodies, particularly local and central government (Reiner, 1991: 6-7). Reiner’s (1991) chief constables were a product of their time; they were not uniform in terms of their background and attitude and he proposed four archetypes (Barons, Bobbies, Bosses and Bureaucrats, ibid. 301 -341). However, (as will be shown in chapter five) the chief constables of the mid 1980s were markedly different from those to be found now. None of Reiner’s chief constables had a degree before joining the police service and only 25 per cent acquired a degree subsequently (Reiner, 1991: 59).

Reiner (1991: 73) found that ‘chief constables constitute a true aristocracy of labour. Predominantly of working-class origin, their degree of moral identification with, commitment to, and satisfaction with their work is more akin to that of the established professions’. Another feature was that they were all white and male (ibid. 75). The makeup of this grouping has changed. However, on 31<sup>st</sup> March 2016 the Home Office found that only 45, or 22.9 per cent, of all chief officers were female and only one was from a black or minority ethnic background (Home Office 2016, Tables H2 and D1); these numbers changed slightly during research for this thesis.

Reiner (1991: 97) also discussed the impact of social and cultural change on the attitudes of chief officers and describes a group who hold 'broadly conservative social views'. Reiner (1991: 193) found that, '[T]he majority (especially of county chiefs) share an ideal conception of a harmonious morally integrated society with a stable and accepted structure of authority'. This has echoes of Weber's (1922-1923: 296) concept of traditional legitimacy. However, whilst most chief constables subscribed to this ideal conception they saw it 'being threatened by the permissive culture of modernity' (Reiner, 1991: 193). How social origins, education and career paths influence the policing philosophies and attitudes of contemporary chief officers and their understandings of the right of police to exercise power is explored in chapter five.

Another aspect to consider is the in-service socialisation of chief police officers. At the time of Reiner's research attendance by would be chief officers on the Senior (later Strategic) Command Course (SCC) had only just been made compulsory (Reiner, 1991: 33). Savage, Charman and Cope (2000) consider the socialising potential of the SCC and Loader and Mulcahy (2001) also comment on the role of the SCC in building a more corporate approach, in conjunction with the centralising tendency of government, which, particularly following the miners' strike, 'urged ACPO to organize itself as the government's principle point of contact on policing' (Loader and Mulcahy, 2001: 258-259). In these accounts, the potential influence of the Home Office on the selection of chief officers and their continuing promotion is noted. The possible influence that these processes and other rites of passage, such as the attachments to national policing units and operations that Reiner (1991: 83) highlighted, have on contemporary chief officers' understandings of the right to exercise power is discussed in chapter five.

#### *A change in the senior police voice*

It could be suggested that Reiner's snapshot captured a grouping of chief constables that, despite the 'national attachments and national police training courses [that] are the critical rites of passage in the formation of a national police elite' (Reiner, 1991: 86) were prepared, wisely or not, to hold and voice distinct views that may not be heard today. This is illustrated by Reiner's references to the views of Sir James Anderton (1991: 215-6, 233, 255, 257) and to the contrasting liberal voice of John

Alderson (1991: 105-106, 111-114, 171, 217, 231 and 352), who had retired by the time Reiner conducted his research.

Loader and Mulcahy (2001: 41) identified the rise of ‘maverick, culturally prominent ‘police heroes’ in the late 70s’. Many of these were still in post when Reiner conducted his research including Sir (later Lord) Geoffrey Dear, Sir James Anderton and Sir Kenneth Oxford (Loader and Mulcahy, 2001: 47). Loader and Mulcahy suggest that a possible explanation for the rise of these prominent policing voices may be found in the cultural and economic changes of the 1960s and 1970s, which prompted some chief constables to be vocal ‘in defence of a political and social order that it deemed to be threatened’ (Loader and Mulcahy, 2001: 260). The discovery in Cabinet papers that Mrs Thatcher intervened personally to save Sir James Anderton’s career, after he made offensive remarks in 1986 about AIDS patients ‘living in a cesspool of their own making’ (Daily Telegraph, 2012) supports this contention.

These maverick police voices chimed, suggest Loader and Mulcahy, with a more authoritarian approach to government but were short lived as greater social mobility, uncertainty, claims to enhance individual freedom and higher expectations of public bodies threatened police legitimacy. By the late 1980s police ‘could no longer boldly assert their symbolic authorizing power’ (Loader and Mulcahy, 2001: 262, see also Giddens, 1994). Indeed, Loader and Mulcahy (2001: 255) argue that by the late 1980s a more cautious and measured approach to when it was appropriate to speak and on what subjects had emerged. Savage, Charman and Cope (2000: 174-182) found that this voice became increasingly cohesive, professional and influential through the 1990s. To what extent the tone and messages were influenced by changes in legitimating narratives is not clear.

There is limited literature to indicate how the senior police voice has altered since the late 1990s. However, Caless (2011: 209) found that the chief officers he interviewed were ‘idiosyncratic people whose views are highly individualistic’ and he rejected the notion of chief officers as clones. Whilst some of Reiner’s cohort were content to be public and insistent in advocating idiosyncratic positions, those with distinctive and potentially highly controversial views amongst Caless’ participants seem largely to have confined the expression of such opinions to the protected environment of an anonymised interview.

Roycroft (2016: 5), in his uncritical presentation of the views of his participants, sought to 'allow practitioners to give their view on the policing world' and his study does not present evidence of maverick voices. There is one passing reference by Roycroft to 'policing gods such as James Anderton' ... [and] 'John Alderson' (ibid. 4- 5) but he offers no assessment of a contrast between current and previous chief constables and what he means by 'policing gods' is not clear. Indeed, Roycroft would be hard pressed to interpret any changes in the attitudes of chief officers given the absence of any reference to the research of Loader and Mulcahy, (2001, 2001a), Stallion and Wall (1999) or Savage, Charman and Cope (2000) and no critical assessment of the implications of the research of Reiner (1991) or Cales (2011) for his study.

Given the limited further evidence on the changing nature of the senior police voice in the literature, this theme is not returned to when assessing the later periods. Whether the voicing (privately or publicly) of idiosyncratic views indicates an equally wide set of stories about legitimacy is unclear. However, as will be shown in chapters five to eight, the confused, conflicted and convenient stories told by participants in this research would be hard to characterise as idiosyncratic.

### **Policing 1997 – 2003**

#### *Context*

This period was marked by a growing challenge to the notion of constabulary, or operational, independence (Patten, 1999) and by an increasing emphasis on human rights as a potential basis for the policing mission and legitimacy (Human Rights Act, 1988; Patten, 1999; and Neyroud and Beckley, 2001). A test of supposed societal norms may also have been posed by the attack on the World Trade Centre in 2001 and later heightened in the UK by the July 2005 London bombings; although the implications of these attacks for police legitimacy are not commented on in the chief officer literature. The new managerial and performance management approaches instigated by the previous Conservative government were, arguably, extended by the incoming New Labour administration.

### *Accountability*

This period saw increasing use of centrally driven targets and initiatives to hold police to account, notable amongst these was the Best Value Regime imposed by the Local Government Act 1999, a statutory responsibility on police forces and authorities and other public bodies, which demanded continued improvements in quantifiable performance, accompanied by a range of targets (for the police) to reduce and detect specific crimes. This was reinforced by HMIC inspections at force and basic command unit level (Reiner 2010: 249 -250; McLaughlin, 2007: 184-185).

### *Policing by consent*

There was continuity in the discourse of policing by consent, as shown by Savage, Charman and Cope's (2000) study. However, the enforcement drive of the first Labour administration arguably helped, at least partially, to undermine the rhetoric, particularly given the pressure to demonstrate 'short-term success and eye-catching initiatives' (Reiner, 2010: 250).

### *Community policing and the 'broad' Vs. 'law enforcement' view of policing*

The demands of the first New Labour Government were for crime reduction and enforcement, although it was a more nuanced approach than the message from the incoming Coalition Home Secretary in 2010 (May, 2010). This could be seen in the increased (but not new) emphasis on partnership initiatives to tackle crime, which were given legislative impetus through the Crime and Disorder Act 1998. However, chief officers were, to an extent, being judged by their ability to reach quantifiable targets, notably for sanctioned detections (Sanders et. al. 2010: 39). Many current chief officers are likely to have risen through the ranks due, in part, to their success in surviving and thriving in this enforcement led and target driven culture. The implications this has for their understandings of the right to exercise power are explored in chapter seven.

### *Constabulary/Operational Independence*

There was a growing questioning of operational independence. The Patten Report (1999: 33) proposed, instead, a concept of operational responsibility:

that it is the Chief Constable's right and duty to take operational decisions, and that neither the government nor the Policing Board should have the right to direct the Chief Constable as to how to conduct an operation. It does not mean, however, that the Chief Constable's conduct of an operational matter should be exempted from inquiry or review after the event.

Patten was addressing policing in Northern Ireland, but his salvo aimed at the power of chief constables, was taken up in England and Wales by the Police Reform Act 2002:

The legislation confirmed the shift from the customary notion of a chief constable being 'operationally independent' to the notion of him/her being operationally responsible (McLaughlin, 2007: 186).

Going further than the Police and Magistrates Courts Act 1994, the Police Reform Act 2002 not only introduced the Independent Police Complaints Commission but also national and local annual policing plans and a range of guidance and regulation which, arguably, through a tightening of the managerial and legislative screw placed greater constraints on the exercise of power by chief constables. It also strengthened the dominant role of the Home Secretary within the tri-partite structure that derived from the 1962 Royal Commission and the Police Act 1964 (Reiner, 2010: 27 and McLaughlin, 2007: 186-187).

This period also saw the further development of an approach to policing and its legitimacy informed by human rights, reflected in the police response to the Human Rights Act 1998 and the impact, beyond Northern Ireland, of the Patten Report in 1999 (Neyroud and Beckley, 2001).

### *New public management and police performance management*

The New Labour Government did not abandon the new public management approaches of previous Conservative governments. Targets changed but the language

of consumerism blossomed. There was continuity in the centralising management style (Golding and Savage, 2008). Indeed, it can be argued that in the early 2000s this was heightened by demands to achieve short term targets, possibly to garner electoral gains through media exposure (Reiner, 2010: 250). Perhaps the clearest example of this tendency was the street crime initiative, focused on reducing robbery in the ten forces with the highest levels of street robbery (Hough, 2004), an issue which, without being prompted, was commented on by some participants in this research, as is discussed in chapter seven.

*Products of their time? Social origins, education, career paths, social and policing philosophies*

None of the studies being reviewed provide detail on the cohort of chief officers who served in this period, albeit it seems reasonable to assume that if there was change it was gradual, as there were no significant changes to selection, training and socialisation processes during this period; other than the introduction of a modular approach to the strategic command course that sought, probably unsuccessfully, to make it more family friendly<sup>6</sup>.

## **Policing 2003 – 2010**

*Accountability*

Whilst this period did not see significant formal changes to police accountability mechanisms the intercession of the Home Secretary, in 2004, to secure the early retirement of the chief constable of Humberside, David Westwood, following the Soham murders and the findings of the Bichard Inquiry, indicate a more interventionist approach to holding chief police officers to account. This followed similar action to oust the chief constable of Sussex, Paul Whitehouse, following police fatally shooting a member of the public in 2001 (McLaughlin, 2007: 186). The increasingly

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<sup>6</sup> I attended the 2003 strategic command course; however, the intensity of the process was such that it is hard to understand how it could be conceived to be more family friendly. The demands of the selection for the course and subsequent promotion and of the highly competitive nature of the training is commented on at length by Caless (2011: 11-43).



interventionist use of the Home Office Police Standards Unit was also a feature of this period (Fisher, 2012).

### *Policing by consent*

Caless (2011: 142) provides an indication that a narrative of legitimacy derived from consent persisted. He quotes Sir Hugh Orde, then President of ACPO:

Chief officers understand the need to be accountable to local communities, policing's relationship with the public we serve is the source of its legitimacy and its effectiveness.

Caless also reports an on the record interview with Sir Dennis O'Connor (then Her Majesty's Chief Inspector of Constabulary), which could be interpreted as a warning about the consequences of failing to comply with an implicit social contract that may underpin legitimacy, 'He [O'Connor] identified that there was a gap between what the public wanted of its police service and the provision that the police themselves were prepared to make' (Caless, 2011: 142, see also *Closing the Gap*, HMIC, 2005).

### *Community policing and the 'broad' Vs. 'law enforcement' view of policing*

This period saw a change in rhetoric and practise in relation to community policing, or the re-labelled version – neighbourhood policing (Fisher, 2012). This was marked by the introduction of the Green Paper *Policing: Building Safer Communities Together* (Home Office, 2003). This emphasis on local communities had the, arguably paradoxical, impact of tightening the managerial grip of central government on policing. The Home Secretary (David Blunkett) and the Policing Minister (Hazel Blears) encouraged the development of neighbourhood policing, which was embraced by HMIC and many chief officers, who saw a gap developing between apparent police performance, as measured largely through crime statistics (which had seen crime falling fairly steadily since the mid-1990s, as judged by police statistics and the British Crime Survey), with a heavy emphasis on detection and reduction; and public confidence in the police, which appeared to be declining (HMIC, 2005 and Fisher, 2012). These changes in policy and discourse were reflected in *Policing: Building*

*Safer Communities Together* (Home Office, 2003) and *Neighbourhood Policing; your community; our commitment* (Home Office, 2005).

### *Constabulary/Operational Independence*

This period was marked by the Government's desire to change policing priorities, away from national crime targets towards local objectives. This was reflected in the heavily directive Police Performance Assessment Framework and, eventually, in the introduction of the short-lived Policing Pledge (a remarkably prescriptive piece of micro-management) and the 'single confidence measure' in 2009 (Caless, 2011: 148). The pledge and single confidence measure were abandoned by the Coalition Government in 2010. The highly directive approach of the Home Office in this period can be interpreted as contributing to a further reduction in operational independence.

### *New public management and police performance management*

Caless' research for *Policing at the Top* (2011) was conducted in 2008 to 2010. The study was based on 85 interviews and nine questionnaires covering 94 respondents from the rank of assistant chief constable to chief constable. Many of his respondents reflect on initiatives of the last Labour Government, from the focus on detection rates to the later attention paid to confidence targets and the Policing Pledge, with the performance management approach of government being a background to some of the discussion.

Caless probes contemporary issues and policing controversies less than Reiner did in the 1980s. However, the strongly negative views that these chief officers have of the Government, and particularly of the Home Office, and barely better opinions of HMIC, civil servants and police authorities (Caless, 2011: 142), suggests that relationships between the overseen and overseers had deteriorated significantly since the research undertaken by Reiner (1991) and by Savage, Charman and Cope (2000).

Caless' study is rich in detail about the demands placed on chief officers and the processes of selection and appointment. It also probes the relationship between chief

officers and those responsible for oversight of the police. However, he does not directly explore the concept of police legitimacy and the right to exercise power.

In his PhD thesis, *The Power of Three*, Fisher (2012) interviewed a range of officers, including chief officers, to explore the development of quality of service initiatives and the impact of political imperative, police leadership and performance management on the perceived success of such initiatives. The context in which he wrote the study was that of a new managerialist approach to the leadership and governance of policing, combined with concern about an apparent gap between public expectations and police performance. At the heart of Fisher's research is a case study of the Citizen Focus initiative (in which Fisher was involved as a police superintendent) and developments in neighbourhood policing in the early 2000s.<sup>7</sup> His broad conclusion is that the political imperative and the associated performance regimes were important in embedding quality of service initiatives and neighbourhood policing during this period but that the commitment of senior police officers to this made a greater contribution to (what he claimed to be) the relative success of these initiatives.

*Products of their time? Social origins, education, career paths, social and policing philosophies*

Caless (2011: 221) notes that at ACPO level policing had become a de facto graduate occupation, with many also having post graduate qualifications. This demonstrates a marked change from the cohort considered by Reiner (1991). However, the impact of educational background on how chief officers understand the right to exercise power was not directly explored by Reiner or Caless.

The social background of police chief officers described by Reiner (1991) may also have changed (Caless, 2011: 11-41). Caless does not explore origins. However, the forthright rejection of Reiner's archetypes by his participants may be indicative of significant change. It also seems likely that Reiner's description of chief officers as a group with predominantly working-class origins may no longer hold true.

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<sup>7</sup> I declare an interest in this study as one of the chief officers interviewed and as a former colleague and current friend of the author.

In his inquiry into the prevalence of a view that there is a contemporary crisis in policing Caless detects echoes of the conservative philosophies uncovered by Reiner:

there is a broad agreement that it [a crisis in policing] embraces a perception of widespread disrespect for the police and the law generally, the rise of dysfunctional groups, such as inter-city gangs, the inability of the criminal justice system to deter people from crime ... the difficulty of securing the support of the public compounded by high-profile errors of judgment by the police (Caless, 2011: 214-215).

However, Caless does not probe this further to examine how such views might influence chief officers' understandings of police legitimacy or the right to exercise power. Nor have chief officers' perceptions of the societal changes, discussed by Giddens (1994), including a more questioning and less deferential society, been explored to see how they might impact on their narratives of police legitimacy.

Caless inquires at length into the socialising aspects of the strategic command course (SCC, which all aspirant chief officers have attended since the late 1980s) on chief officers and on the nature of the selection process for the SCC and for chief officer posts (Caless: 2011:11-81). It is possible that this has led to a somewhat more similar grouping of individuals holding chief officer rank in contemporary England and Wales (a tendency commented on by Savage, Charman and Cope, 2000), although Caless maintains that the officers he interviewed were diverse and individual in outlook (Caless, 2011: 209).

## **Policing 2010 – 2017**

### *Accountability*

The advent of the Coalition Government in 2010 led to significant changes in accountability mechanisms, through the introduction of police and crime commissioners (PCCs) and associated changes and guidance set out in the Police Reform and Social Responsibility Act 2011 (Home Office, 2011). The explicit intent was to increase localism and loosen the grip of the Home Office. However, this decentralising tendency has potentially been, at least partially, mitigated by the inclusion of the Strategic Policing Requirement within the 2011 Act (for the latest

version see Home Office, 2015). So far, the impact of the election of the Conservative Governments in 2015 and 2017 on the accountability mechanisms introduced by the Coalition Government, appears to have been limited; although the scope of police and crime commissioners was extended to fire and rescue services by the Policing and Crime Act 2017 and the Act passes the responsibilities of PCCs to elected combined authority mayors in areas where these have been introduced. The same Act also proposed that the IPCC be replaced by an Independent Office for Police Conduct (Barret, 2016 and Home Office, 2017), this change was made in January 2018, although the extent to which this is more than a rebranding is not yet clear.

The tendency to defer to the authority and legitimacy of the Home Office and to accept its right to hold the police to account, identified by Reiner (1991) is less apparent in Caless' (2011) account of his interviewees' views. Caless found that 86 per cent of his respondents had a negative view of the Home Office and 80 per cent a negative view of HMIC. Such opinions were voiced to Caless in some colourful and sometimes vitriolic terms. Caless (2011: 175) comments that 'such negativity needs to be addressed before it becomes corrosive'. Roycroft (2016: 169 -190 and 89-118) notes the disquiet reported by the chief constables he interviewed about the quality and fairness of their oversight and governance arrangements, which touches on the Home Office but emphasises the role played by HMIC, the IPCC and PCCs. The impact of such a difficult relationship between police leaders and those who hold them to account, for the legitimacy of government, politicians and police, is unclear and is discussed further in chapter eight.

The policing environment that Caless (2011:120) examined revealed a less sanguine group of chief officers than Reiner (1991) had found when it came to their opinion of police authorities. With 70 per cent of Caless' respondents having a negative view of police authorities, albeit a substantial minority thought well of their authorities. Yet some of this satisfaction may, again, have derived from the adeptness displayed by chief officers in managing police authorities to escape unwelcome intrusions into policy and operational matters and in avoiding the 'partiality of local politics' (Caless, 2011: 124).

Caless was writing in the wake of the de facto dismissal of the Metropolitan Police Commissioner, Sir Ian (now Lord) Blair by the Mayor of London, Boris Johnson.

Some of Caless' participants perceived a flexing of muscles by police authorities in the wake of this event and during the run into the introduction of PCCs. Caless speculates on the potential impact of the introduction of PCCs. However, it may be unwise to dwell on such speculation, as his assumptions about controls on the power of PCCs (notably he anticipated that police and crime panels would have powers that would provide a significant check on PCCs and that HMIC would have a role in inspecting the office of PCC), did not come to pass and he did not anticipate the low turnout at the PCC elections, which if one adopts the criteria for legitimacy adopted by Beetham (1991: 15-16), would, partly, undermine the legitimacy of this office.

### *Policing by consent*

The reconstruction of Peelian Principles in the New Peelian Principles in the Labour Party commissioned Independent Police Commission report (2013), suggests that the concept of policing by consent remains a significant narrative. Robertson's (2016) thesis seeks to explore the views of a range of serving<sup>8</sup> and retired officers about the validity of the concept of policing by consent, which he links to concepts of accountability and discretion. In asking his respondents, ten of whom were or had been chief officers, about cases where they felt that consent had been lost, he tries to penetrate what he described as 'professional rhetoric'. What emerges is a widespread subscription to a narrative of policing by consent. However, Robertson does not directly link this to the concept of legitimacy.

Fisher's (2012: 19) thesis indirectly supports the proposition that policing by consent remains a narrative used by police to explain their legitimacy, 'it is imperative that the police have a legitimacy that enables them to communicate and cooperate with the public'. Roycroft (2016: 22) uncritically accepts a discourse of consent, '[T]he policing function in the UK originated with the Peelian principles introduced by Sir Robert Peel in 1829'; indeed, he includes the principles as an appendix (ibid. 205 - 206) without referencing the source. He, similarly, reports comments that support a discourse of policing by consent, mainly in the context of the threat posed by austerity to community policing (ibid. 25 - 26). This ready acceptance of policing by consent

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<sup>8</sup> Officers who were serving in 2007 and 2008 when Robertson's interviews were conducted.

may relate to Roycroft's status as a former detective chief inspector; albeit this is difficult to ascertain as the only self-reflection on his status is that 'the author's background as a professional Police Officer allows for a greater insight into the matters raised by the interviewees' (ibid. 5); a highly contestable claim.

How widely and in what ways chief officers' constructions of legitimacy and of the supposed right of police to exercise power are informed by, or use, the concept of policing by consent is explored in chapter seven.

### *Community policing and the 'broad' Vs. 'law enforcement' view of policing*

The apparent expansion of localism was accompanied by a change in tone, from attention to public confidence and the broad role of policing towards an, arguably simplistic, focus on crime reduction. This might be viewed as a return to an earlier law and order agenda and is exemplified by the Home Secretary's speech to the ACPO Conference in 2010, 'In scrapping the confidence target and the policing pledge, I couldn't be any clearer about your mission; it isn't a thirty-point plan; it is to cut crime. No more, and no less' (May, 2010). The extent to which this change in political rhetoric is reflected in the way chief officers express their visions of policing purpose and link this to a supposed right to exercise power, is discussed in chapter six.

### *Constabulary/Operational Independence*

The balance envisaged in the tripartite structure of policing initiated by the Police Act 1964, had been weakened by the Police and Magistrates Courts Act 1994 and the Police Reform Act 2002, both of which strengthened the hand of the Home Secretary, at the expense of police authorities and chief constables. The Police and Social Responsibility Act 2011, arguably, further undermined the influence and operational independence of chief constables, whilst potentially strengthening the power and influence of local oversight, through the introduction of police and crime commissioners.

An example of this weakening was the clear direction within the Police and Social Responsibility Act 2011 that PCCs could not delegate writing annual and strategic

policing plans to chief constables and these plans, effectively, became the product of the PCC, rather than a shared endeavour. The plans are the guiding template for the chief constable, who is operationally responsible for delivering against them, whether he or she agrees with them or not.

However, Section 79 of the Police Reform and Social Responsibility Act 2011 required the Secretary of State to issue a Policing Protocol (Home Office, 2011a) to help guide the relationship between chief constables and police and crime commissioners. The Policing Protocol repeatedly refers to operational independence but does not define it, indeed it notes that it is fluid and context driven.

The police and crime commissioners' declaration of acceptance of office, commonly referred to as their Oath (Home Office, 2012), states that they should not interfere with operational independence, but again operational independence is not defined. There is an attempt within the Policing Protocol to provide some clarification about a chief constable's direction and control, although this is not the same as the concept of operational independence.

Whilst, according to the Policing Protocol, the chief constable should be operationally independent and have direction and control, this does not mean that s/he cannot be held to account for their operational performance, nor does it limit the questions a police and crime commissioner can ask. Further, the PCC has significant powers, including to hire and fire the chief constable and to renew or end their fixed term contract. This is likely to be in the forefront of many chiefs' minds. The PCC also sets the budget and objectives for the force, and the chief constable is responsible for delivering these objectives and working within the budget.

The PCC for North Wales was, until May 2016, the Chair of the Association of Police and Crime Commissioners<sup>9</sup>; his deputy (Sandham, 2016<sup>10</sup>) noted that the line around operational independence and direction and control is indistinct. The Policing Protocol is as close as it gets to guidance on how PCCs and chief constables should work together. Individual PCCs and chief constables interpret the Protocol in different ways.

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<sup>9</sup> Winston Roddick CBE QC was Chair of the APCC until he retired from post in May 2016.

<sup>10</sup> Julian Sandham agreed that his comments can be used and attributed in this thesis.



The dynamic of having one named and elected individual is very different from that with a Police Authority. In North Wales this led to an 18-fold increase in correspondence from the public and the media were more inclined to focus on the PCC; including close questioning on immediate and high profile operational matters (Sandham, 2016). Therefore, there has been an imperative for chief constables to inform PCCs about operational matters, even when they are still active; as opposed to the predominantly post event scrutiny formerly exercised by many police authorities.

In chapter eight contemporary chief officers report that the behaviours of PCCs and their level of intrusion into the operational world of policing varies widely. Some PCCs have taken control of significant and extensive back office functions and delegated very little to their chief constables and set numerous targets. In other forces, chief constables have wide discretion.

As set out in chapter two, the replacement of ACPO by the National Police Chiefs' Council (NPCC) in 2015 and the demise of the National Police Improvement Agency (NPIA) in 2012 and its replacement with the College of Policing, a body with a wider remit, which chief officers have less influence over, has reduced operational independence. Further, the power given to the Director of the National Crime Agency (NCA) to direct chief officers 'to undertake a specific operational task or to assist another partner of the NCA with the task' (NCA, 2014) and the role the NCA has taken conducting investigations in forces, effectively at the behest of the Home Secretary, has also contributed to the apparently continuing diminution of operational independence. This has, arguably, been exacerbated by the growth in resources provided to HMIC and the IPCC, whilst police force budgets declined. How this might influence the understandings of the right to exercise power held by chief officers is explored in chapter eight.

### *New public management and police performance management*

The approach of the Coalition Government and the following Conservative Governments to the management of the police service appears paradoxical. The narrative from former Home Secretary Theresa May, and later Amber Rudd, has been of a hands-off approach to free police to find the best solutions, in conjunction with police and crime commissioners, and to move to a target free culture (May, 2010).

However, the reality at a local and national level may not fit the narrative. There is great variety in the level of targets and micro-management being exerted by PCCs, with some exceeding the levels shown under New Labour. An example being the 2013-2017 policing plan produced by Sir Clive Loader (2013), the police and crime commissioner for Leicestershire, which contained 20 strategic priorities, each with multiple quantifiable targets; the Nottinghamshire plan for the same period contained 61 quantifiable ‘desirable outcomes’.

Evidence of continuing highly intrusive performance management of the police can also be seen at the national level. This is demonstrated by the expansion of HMIC and the introduction of the new PEEL (police efficiency, effectiveness and legitimacy) inspections, the interim findings of which were announced in November 2014 (HMIC, 2014) and published in 2016 (HMIC, 2016). There was also a significant increase in the inspection programme, which led to some forces receiving 12 inspectorate visits in a year (Weinfass, 2014).

The impact of this, arguably, confused clash between political narrative and a potentially different account of continuing new public management or highly directive performance management, on chief officers’ understandings of the right to exercise power is examined in chapter seven and eight.

### *Products of their time? Social origins, education, career paths, social and policing philosophies*

The change in selection processes and a high turnover of chief constables since the introduction of police and crime commissioners (Roycroft, 2016: 96) may have changed the nature of the current cohort of chiefs compared with those interviewed by Caless (2011) and Reiner (1991). One aspect of these changes is the sharp difference in educational background. In an on-line search of constabulary websites<sup>11</sup>, no current chief constable without a degree was identified and the last prominent chief officer without a degree was Sir Paul Stephenson (Metropolitan Police Commissioner, 2009-2011). How the social and educational origins of chief officers influence their understandings of the right to exercise power is unclear and is explored in chapter five.

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<sup>11</sup> Conducted by the researcher 15th December 2016

Whether the potentially centralising and homogenising tendency of the strategic command course and other national courses and attachments identified by Reiner (1991: 33) and by Savage, Charman and Cope (2000), has been altered by the possibility of greater localism, emerging through the selections made by police and crime commissioners, the removal of the bar on officers serving in three consecutive chief officer ranks in one force and the end of the Home Secretary's right of veto, previously exercised through the Senior Selection Panel, is considered in chapter five.

## **Discussion**

Seven themes emerge from this review of previous studies of chief police officers in England and Wales (accountability; policing by consent; community policing Vs law enforcement view; constabulary/operational independence; new public management and police performance management; social origins, career paths and social and policing philosophies; and changes in the senior police voice). These themes are linked to the concept of police legitimacy and to the understandings chief officers may hold about the right of police to exercise power. Overlaps and occasional conflation of these concepts are apparent. However, these themes differ from that of police legitimacy and the previous literature does not directly address the understandings of legitimacy, or of the right of police to exercise power, held by chief officers.

### *Accountability*

The nature of police accountability and how it does, or should operate, has been contested since 1981, following the Brixton disorders, and remains contested, as demonstrated by the Independent Police Commission Report (2013). However, whilst there is continuity in contestation, the mechanisms of accountability have changed. The apparent, or at least claimed, increase in the complexity and breadth of policing has implications for how police are held to account (Stallion and Wall, 1999, and Day and Klein, 1985). This has been accompanied by an aspiration to professionalise policing, reflected in the introduction of the College of Policing and by the increase in highly specialist and accredited training and learning (in areas such as investigation, firearms and public order operations and counter terrorism) and in the development of

authorised professional practise. Together these changes challenge those holding the police to account, who may not have the relevant expertise and experience and could also frustrate those being held to account.

Accountability is linked to legitimacy in its potential to promote dialogue and in helping to identify societal norms that the police may need to consider when seeking to reinforce, or regain, legitimacy. Yet, as Cales (2011) and Roycroft (2016) suggest, the relationship between those formally holding the police to account and chief officers, may be more fractured than in the past. The implications of these changes for chief officers' understanding of the right to exercise power are discussed in chapters five to eight.

### *Policing by consent*

The literature suggests a continuity of rhetoric amongst chief officers and many politicians, in using consensual policing as a legitimating narrative (Reiner, 1991, Robertson, 2016 and Roycroft 2016). However, how this narrative has been adapted to accommodate changes in society (such as those suggested by Giddens, 1994) is not clarified by previous research. The impact of an increasingly target driven approach to policing, particularly from the late 1980s till 2003, an era through which current chief officers served, on their understandings of legitimacy and the right to exercise power is little understood.

It is not clear if the gap that was identified by HMIC (2005) between public expectations and the police ability, or will, to deliver against these (sometimes competing) demands has closed or widened. It is also not apparent what the implications of austerity since 2010 have been on the police's capacity and capability to meet public expectations and to remain sufficiently effective to retain consent. Although, the extent of this consent is contested. The narrative of consent may also have been influenced by an apparently increasingly neo-liberal approach to policing, which arguably values order and crime reduction over cohesion; albeit these objectives are not necessarily mutually exclusive. Narratives of policing by consent and the implications these stories have for chief officers' understandings of the right to exercise power are discussed in chapter seven.

### *Community policing and the 'broad' Vs. 'law enforcement' view of policing*

The distinction between a broad/community policing perspective and an enforcement view is, to an extent, artificial, as chief officers are likely to sit somewhere on a continuum between a relentless approach to enforcement and crime reduction and a broader view of policing, which pays greater attention to community engagement and encompasses a more complex range of activities. However, the literature reveals tensions between those holding views nearer to either end of this spectrum. This may expose divergences in appreciations of the nature and purpose of policing. What impact these varied views have on the tales of legitimisation told today by chief officers was unclear and is considered in chapter six, seven and eight.

It was also not apparent what the impact of wider societal and political narratives and discussions about the purpose and nature of policing (arising from debates such as that surrounding a new localism and the implications of austerity and new types of crime) have on chief officers' understandings of the right of police to exercise power. This is explored in chapters five to eight.

### *Constabulary/Operational independence*

Constabulary independence is a term little used by chief officers today, although it survives in discussions of operational independence. It is likely that operational independence continues, in some form, at least in relation to the direction and control of specific police operations. Indeed, the Policing Protocol Order (Home Office, 2011a) and the Police and Crime Commissioners' Declaration of Acceptance of Office (Home Office, 2012) emphasise the importance of operational independence, although they do not define it. However, an accumulation of legislative and administrative changes, interventions and guidance means that operational or constabulary independence does not exist in the form discussed by Jefferson and Grimshaw (1984) and nor can it be used as effectively as a shield against scrutiny by recalcitrant chief constables, in the manner posited by Patten (1999). The policing, political and legal discourse around operational independence has altered. However, the implications of such change for chief officers' understandings of police legitimacy and of the right of police to exercise power are not understood and are enquired into as part of this research and discussed in chapter eight.

### *New public management and police performance management*

1981 – 2010 saw new public management develop and increasingly private sector management techniques were deployed, notably quantifiable targets and associated performance regimes. Yet there were distinct changes in emphasis, particularly from 2003 – 2010 with a shift from enforcement and crime reduction targets to public confidence targets and centrally mandated forms of local engagement (notably in the introduction of a refined form of community policing/neighbourhood policing, the single confidence measure and ill-fated policing pledge).

However, 2010 – 2017 presents a paradox. There is a political narrative, emphasising localism and a hands-free approach from central government and the abolition of targets, apparently contradicted by increasingly well resourced (except for the College of Policing) and centrally driven interventions, using HMIC (HMICFRS since 2017), the College of Policing, the NCA and the IPCC (IOPC since January 2018). At the same time, there is a patchwork of different approaches to local oversight and direction, with some police and crime commissioners being very directive and heavily reliant on target-based performance management in holding chiefs to account, whilst others have taken a contrary approach.

Narratives related to the police role in upholding (or at least not abusing) human rights, emerged strongly between 1997 and 2003 but persists today, notably in the *National Police Code of Ethics* (College of Policing, 2014a). This may have mitigated some of the, arguably, neo-liberal agenda of new public management. However, the impact of human rights discourse on chief officers' understandings of police legitimacy is not well understood and is considered as part of this research and considered in chapter five.

The cumulative impact of new public management and performance management approaches on the development of chief officers' understandings of the right to exercise power are not understood. The apparently paradoxical nature of performance management since 2010 on chief officers' understandings of police legitimacy and the right of police to exercise power has also not been adequately explored. Both issues are examined by this research and discussed in chapter seven.

*Products of their time? Social origins, education, career paths, social and policing philosophies*

There is a contrast between the cohort of chief constables interviewed by Reiner (1991) and those of Caless (2011) and Roycroft (2016: 103), notably in terms of education. It is likely that their social origins will also be different; although Caless (2011) and Roycroft (2016) have little to say about this. The in-service socialisation of chief officers has also changed and the gender balance and a limited number of chief officers from black and minority ethnic groups is such that chief police officers cannot accurately be described as an exclusively male and white elite, though they are far from representative of wider society, a charge that could also be laid before some other elites.

It is possible that the localised nature of the selection and appointment of chief officers since 2011 (following the Police and Social Responsibility Act, 2011) may have started to alter the type of officer being appointed to the most senior ranks and have influenced their approaches to policing but this is untested; although Roycroft (2016: 97) expresses concerns about the increasing parochialism and lack of competition in chief constable appointments.

Current chief officers may come from different backgrounds than those of the 1980s and will potentially have been influenced by changing societal norms and experiences of in-service socialisation and different demands on policing. However, whether these changes have produced a more liberal leaning cohort than those interviewed by Reiner is not clear and nor are the implications of these changes for chief officers' understandings of police legitimacy and the right of police to exercise power understood; this is considered in chapter five.

*Changes in the senior police voice*

The literature suggests a move from maverick senior police voices in the early 1980s towards a more tempered, influential and cohesive chief officer voice by the late 1990s (Loader and Mulcahy, 2001, 2001a and Savage, Charman and Cope, 2000). This is also apparent in the socially conservative views aired by some of Reiner's chief constables (Reiner, 1991) and their diverse takes on philosophies of policing (reflected

in the archetypes he proposes). Yet at the same time a clear majority of chiefs had a broad, community oriented, view of policing and hence it would not be accurate to suggest a simple link between social conservatism and a narrow law enforcement focus. Caless' (2011) respondents, in the protected environment of an anonymised interview, still seemed capable of making comments that were far from tempered, although their views were diverse. However, Caless' study does not provide sufficient evidence to establish how the senior police voice has altered or what implications this has for chief officers' understandings of the right of police to exercise power. Roycroft's (2016) research sheds no light on chief officers' understandings of the right to exercise power or on changes in the senior police voice, partly due to the lack of focus in his research; indeed, Roycroft notes that 'the reader may feel that the book does not deal fully with individual issues' (ibid. viii); this was certainly my view. This thesis seeks to identify what changes may have occurred in the senior police voice, particularly in relation to the right to exercise power.

## **Conclusion**

The review of literature concerning concepts of legitimacy covered in chapter two and the discussion of chief officer literature in this chapter reveal the complexity of the subject area and a conflation and interconnection of concepts and potential understandings. Attention to the broad concept of police legitimacy needed to be directed to a more focused research question. Hence the primary research question was, 'how do chief police officers in England and Wales understand the right of police to exercise power?' The previous chapter identified four broad themes that framed the exploration of this question. This chapter uncovered seven further themes, which were used to guide this research. The rationale for the methodology and methods adopted to answer this question are turned to in the next chapter.



## **Chapter Four**

### **Purposeful Conversations:**

### **Methodology and Methods**

#### **Introduction**

Recent studies of police legitimacy have been predominantly quantitative and focused on public attitudes, notably in the field of procedural justice research. How police view legitimacy has received limited attention. There have been several previous studies of chief officers in England and Wales, but none focused on chief police officers' understandings of the right of police to exercise power and much of the research is dated.

So, as identified in chapters two and three, there is a gap. Police chief officers are an elite group whose beliefs, attitudes and actions have the potential to reproduce, develop or transform the legitimacy of the police, with consequences for how power is used. This critical realist research is qualitative and inductive and used semi-structured interviews to gather chief officers' stories and accounts, to answer the central research question, 'how do chief police officers in England and Wales understand the right of police to exercise power?'

This chapter sets out the rationale for the research approach, its methodology, methods and form of analysis chosen. The selection of participants is considered, as is access to them. Ethical concerns and safeguards are discussed, including the implications of the researcher's status as a former member of the elite being studied.

#### **Methodological framework**

The research paradigm adopted here is constructivist, recognising that the social world is constructed through interactions between people and between people and institutions (Knoblauch and Wilke 2016: 64 and Berger and Luckmann, 1966). More specifically a critical realist philosophy is adopted (Bhaskar, 1981 and Lopez and Potter 2001). This thesis accepts the contention that 'society is both the condition and outcome of human agency and human agency both reproduces and transforms society'

... ‘at any moment of time society is pre-given for the individuals who never create it, but merely reproduce or transform it’ (Bhaskar, 1998: xvi). Critical realism also recognises that knowledge relates to its cultural and historical context, but it is still possible, and desirable, to make reasoned judgments about which theories and explanations best represent knowledge of reality (Lopez and Potter, 2001: 9).

Police legitimacy and the perceived right of police to exercise power are forms of social reality that are reproduced, developed and potentially transformed by interactions between people and between people and institutions. Chief police officers are important social actors in this process. This research sees actors accounts forming the ‘indispensable starting point of social enquiry’ (Bhaskar, 1998: xvi). Therefore, this research sought the accounts of chief police officers. However, critical realism does not determine the methods to be adopted, ‘rather it demands that scientific methods be appropriate to their objects’ (Lopez and Potter, 2001: 15).

The data used to answer the research question lay in the thoughts and stories that police chief officers had about the right to exercise power. Hay (2016: 527) suggests, ‘[A]ctors orient themselves to their environment through a veil of ideas – understandings, cognitions and normative disposition’. This research lifted the veil.

### **Research design: the case for qualitative interviewing**

The key question in selecting a research method is, will the approach provide quality data that can be analysed and interpreted to answer the research question (Patton, 1999: 1189 and; Roulston, 2006: 202)? Semi-structured qualitative interviews were judged to be the appropriate means for acquiring such data for this research.

The right of police to exercise power, whilst not universally accepted, may be a ‘taken – for – granted convention’ (Harre and Bhaskar, 2001:28), in part developed through the stories learned, lived and told about it (ibid. 26). Personal accounts also provide powerful insights into social reality, although individual accounts can be significantly constrained by wider public discourses (Cederberg, 2014). Bury (2001) and Giddens (1991) argue that the stories individuals tell may be increasingly important as the influence of wider societal norms decline.

Semi-structured qualitative interviews were selected to promote a constructive interaction between the participants and researcher (Roulston, 2010: 218 and Silverman, 2001), to reveal the accounts of chief police officers and through this their understandings of the right of police to exercise power. Data was generated in the interaction (not collusion) between the interviewer and interviewee and this revealed a complex set of understandings, which were then interpreted. How things were said and in what context, and not just what was said, was important (Creswell, 1994: 99).

Waddington (2013: 14) notes that police officers 'just love telling stories' and the experience of researchers who have studied chief officers (Reiner, 1991; Savage, Charman and Cope, 2000; Loader and Mulcahy, 2001 and 2001a and; Caless, 2011) suggests that obtaining rich personal accounts from senior police officers through qualitative interviews is achievable. Moreover, Crewe (1974: 42-43) and Mikecz (2012) suggest that interviews are the best method for studying elites. Therefore, qualitative interviews were used to generate the data needed. However, there are a range of ways to conduct such interviews (Roulston, 2010).

### **Considerations for an elite study**

Harvey (2011: 433) identifies those 'who occupy senior management and Board level positions' as members of elites. Welch et. al. (2002: 613) also consider that those at the top of organisations are members of an elite. There are other forms of political and cultural elites, but chief police officers sit at the top of their organisations, exercise power and influence and are an elite.

Elite members can be adept at deflecting questions and speaking about issues which do not assist in answering the research question, particularly if they interpret the research interest as threatening (Jacobsson and Akersstrom, 2012: 720). Similarly, Mikecz (2012) and Crewe (1974) identified the skill of many members of elites in presenting official accounts to the outside world. The training that chief officers have in presenting official accounts and their skill and experience in dealing with the media, governance and inspections posed this risk. Mikecz (2012) suggested that this can be tackled, to some extent, by developing a degree of trust and rapport with respondents; this approach was used.

Moore and Stokes (2012: 444) and Harvey (2011: 434) found that elites are receptive to open questions and loosely structured interviews, with more challenging questions and themes being addressed later in the interview. The interviews followed this pattern.

Vahasantanen and Saarinen (2012: 495) noted that similarity may lead to rapport and promote greater disclosure. I anticipated being able to obtain access to the elite and establishing a rapport with them, through the range of approaches used and in part based on previous membership of the elite. This was born out during the study. The implications of my position as a former member of this elite are discussed later in this chapter.

### **The approach to qualitative interviewing**

The interviews in this study drew on a variety of approaches and I concur with Thueson's (2011: 614) claim that this could be appropriate, dependent on 'purpose, people, context, and emotions that are potentially aroused through social interaction'. It was not assumed that simply by asking appropriate questions and being as objective as possible quality data would be generated, a typology which Roulston labelled as neo-positivist (2010: 204). However, Thuesen (2011: 618) observed, that 'my elite respondents often talked extensively' ... 'because I asked straightforward questions, listened attentively, and allowed them to talk'.

Given the forms of research that many police chief officers are exposed to<sup>12</sup>, and their own experience of interviewing, both in criminal and selection processes, chief officers were more likely to be open to questions, which they consider to be asked fairly and objectively. Hence, the questions posed (see Interview Schedule, Appendix B) were not leading and were put in a neutral manner; which fits with a critical realist's aspiration for objectivity, whilst not 'denying the particulars of the perspective from which our attempts at such are made' (Lopez and Potter, 2008:12). It was also made clear to participants, using the information sheet given to them (Appendix C) and in the verbal introduction to the interview, that I did not have a view of what the 'right'

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<sup>12</sup> Drawing on my own experience of eight years as a police chief officer and as former national police lead on linking research to practice; where quantitative studies, which sought to provide broadly positivist responses to current policing challenges, tended to dominate.

answer should be, and that no hypothesis was being tested. This approach worked. The use of open and objectively framed questions generated a large volume of quality data, which is discussed in chapters five to eight.

The approach adopted also has elements of the, possibly ironically labelled, ‘romantic’ typology (Roulston, 2010 and Alvesson, 2003), which advocates the development of rapport and shared interest with participants to gain deep insights into their worlds. This can promote greater opportunities to generate quality data than ‘agnostic’ approaches, which have significant elements of confrontation and conflict and emphasise areas of disagreement (Kvale, 2006). This approach adopted was appropriate as the recent political and regulatory focus on the quality and integrity of police chief officers may have promoted defensiveness and resistance to the inquiries of researchers (Hales et. al., 2015). The scrutiny that chief officers felt under and the feelings of precariousness this induced in some emerged during the interviews (see chapter eight). This, and the data generated, supports the use of elements of the romantic typology. This was assisted by my former status as an insider, which is discussed later.

There are other considerations concerning the use of agnostic approaches. Interviewees may curtail or constrain interviews if they feel the approach is threatening. They could also act to reduce the possibility of continued access, not only to them but to other members of the group being studied; with implications for researchers in the future. The risk lies not only with the interviewee but with the interviewer, who may lose control ‘when an emotional dynamic takes over the interaction’ (Thuesen, 2011: 618). Consequently, the more nuanced approach advocated by Thuesen (2011), which has non-directive elements, to promote dialogue, whilst also being prepared to confront and probe to obtain data, was favoured in the interviews. At no stage did an unhelpful emotional dynamic develop, the tone was generally constructive and friendly. Although many interviewees found the issues being discussed challenging, as CC Phil commented at the end of his interview:

I think the service is very confused around this notion of legitimacy. I don’t think it’s – it’s not in the conversation as much as it ought to be.

And CC Trudy remarked:

I'm actually just glad I had the interview today. I looked at that and thought 'oh no'. Because you know what it's like, you deal with things intensely, but you don't think. You don't have a lot of time for thinking big thoughts, so I hope it was, kind of ... I think it's a fascinating – fascinated because you are talking about making things very conscious that become very sub-conscious in a way you are doing lots of things.

However, particularly when dealing with elites, there may be a place for some use of the more confrontational approaches suggested by Kvale (2006), as '[A]n uncritical approach that is too empathetic and dialogic allows respondents to sidestep more sensitive issues' (Thuesen, 2011: 618). The issue of legitimacy may, at least for some chief officers, be viewed as such a sensitive issue. Therefore, when probing questions were asked, which could potentially be viewed as contentious by participants, the tone and delivery was carefully judged. This helped gather quality data, whilst respecting the researcher's responsibilities towards research participants 'interests, sensitivities and privacy' (British Sociological Association, 2002: 2-3).

There was one instance where an interview briefly became confrontational. In this case I felt that I was being fed a party line or official stance (Crewe, 1974) about the Police Code of Ethics (College of Policing, 2014), which differed substantially from the varied and nuanced accounts provided by previous participants and which did not seem to be credible. That a confrontational approach was only used once is to the credit of the participants, who not only gave their time but appeared open and thoughtful. This emerged in frequent departures from declared national approaches and in the range of dissenting voices and divergent views.

However, where necessary, supplementary and difficult questions were asked to elicit more data and enhance understanding, particularly in the later stages of interviews. The need for follow up questions also emphasised the importance of the semi-structured approach. The rationale for the interview schedule that was used is examined later in this chapter.

The interviews sought to develop a rapport between researcher and subject, whilst being prepared to challenge and probe to elicit further data where necessary. The interviews were necessarily semi-structured, in part to allow for the conversations to

develop and enable supplementary questions to clarify and enhance the information gathered.

The semi-structured approach was also a recognition of the potential for power relations to shape the interviews. Those being interviewed were powerful and prone to take conversations in directions that interested them, rather than simply answering questions directly or in the order set out in the interview schedule; this was dealt with by being aware of this possibility and carefully managing the interactions to ensure quality data was gathered.

### **Power dynamics in interviews**

The interplay between gender, age, rank, region, specialist background and previous contact and reputation, of the researcher and participants, could have influenced the dynamic and power balance within these interviews (Vahasantanen and Saarinen, 2012: 495). Also, factors such as the location and timing of interviews were more in the control of the interviewee than interviewer (all but two of the interviews were held in the office of the participant, one in a meeting room at the headquarters of the officer and one in my kitchen). In all but two of the interviews the research subjects wore the uniform and insignia of their rank; though this was likely to relate to the interviews taking place during their working day, rather than being a deliberate symbolic display of power.

There were occasions when I felt that previous power relations might be influencing the conduct of the interview. In one case, where I had held a more senior rank than the interviewee, the participant answered questions very directly and then waited for the next question; the research diary records, in a note made shortly after the interview, 'is there a residual power relationship' ... 'or is this just how X naturally responds?'. In contrast, following an interview with an established chief constable the research diary noted, 'X seemed to have an agenda – at times more a lecture on leadership than answering my questions'. However, both interviews provided quality data and the tone of these interviews was friendly. In all the interviews the power relationships did not impede the gathering of quality data.

## **The research participants**

Before the data gathering phase started it was decided that sixteen qualitative interviews should generate sufficient quality data to answer the research question. This was considered achievable for a single researcher, given that the interviews would be long, and the semi structured nature of the interviews required detailed and labour-intensive analysis. This was reviewed after the first two interviews, both of which took about 90 minutes to conduct and about two hours in total, including introductions, closure and thanks. A great deal of valuable data was obtained from these pilot interviews and the plan to conduct sixteen interviews was not altered.

The study does not claim to present data from a perfectly representative group of chief officers, but the sample was drawn from a range of regions, rural and urban areas and had a gender balance that was like that of chief officers across England and Wales at the time the interviews were being conducted. The age, backgrounds, education and career profiles of the chief officers also varied but are reasonably representative of the wider grouping of chief officers in England and Wales. The potential impact of the personal histories and backgrounds of these chief officers are discussed in chapters five to eight.

Chief constables are over-represented in the sample, as a judgment was made that these were likely to be the most powerful individuals and would be able to provide quality data. However, deputy and assistant chief constables also hold positions of considerable power and influence and some of them will become chief constables and it was considered important that their voices should be heard too, and their interviews also generated quality data.

Nine chief constables, three deputy chief constables and four assistant chief constables were interviewed between 12<sup>th</sup> January 2016 and 26<sup>th</sup> May 2016. The cohort included four women and one officer from an ethnic minority background. A feature of Reiner's (1991: 53-75) chief constables is that they were all white and male. The makeup of this grouping has changed (as discussed in chapter three). However, on 31<sup>st</sup> March 2016, the Home Office found that only 45, or 22.9 per cent, of all chief officers were female and only one was from a black or minority ethnic background (Home



Office 2016, Tables H2 and D1); these numbers changed slightly during the field work and since.

In contrast to the working-class elite Reiner (1991) interviewed, the chief officers seen in 2016 were predominantly from middle-class backgrounds, all but one had a degree and seven had master's degrees, again this appears to be broadly representative of current chief officers and the cohort studied by Caless (2011). The social and educational background of the officers and the implications this may have for their understandings about the right of police to exercise power are discussed in chapter five.

### **Access**

Initial and continuing access to individual members of elites and the wider elite group is a recurring theme in elite studies (Welch et. al., 2002). The establishment of a level of trust and rapport can be important in retaining this access (Welch et. al., 2002; Mikecz, 2012 and; Healey et. al., 1993). In this study potential participants were sent e-mails, in some cases directly and in other instances through personal assistants (PAs) or staff officers. In two cases e-mails had to be followed up by phone calls to finalise agreement to the interview. Initially 18 potential research subjects were approached, of these 16 agreed to be interviewed, one of these asked not to be interviewed (on grounds of workload) shortly before the interview was scheduled but another chief officer, with a similar background, was then approached and agreed to participate. Thus, 15 of the 18 who were originally approached were interviewed and a further chief officer agreed to be interviewed later; a total of 16 interviews. Of the two chief officers who were originally approached but did not participate one refusal was made on the grounds of excessive workload and in the final case I gave up after receiving a series of non-committal replies from personal assistants. A response was also received from a chief officer that had not been approached, declining on grounds of workload; it appeared that the PA to another chief officer had taken the initiative to send the request to the PA to this chief officer.

I knew all but one of those approached, this is not surprising as police chief officers are a relatively small group (196, of whom 194 were available for duty on 31<sup>st</sup> March 2016, Home Office 2016). National work, regional and national meetings and training

lead to frequent contact, and I had served with three forces and Her Majesty's Inspectorate of Constabulary. Some participants I knew well, others I had only met occasionally. However, previous membership of the elite did ease access and there was, consequently, no need to approach gatekeepers, a tactic used by Reiner (1991) during his research into chief constables.

### **Post interview contact**

Welch et. al. (2002) noted that post interview informal and formal expressions of thanks and the opportunity to provide feedback can facilitate continuing access to the individual and to other members of the group being studied. Such contact can lead to further valuable information being provided 'in the process of factual verification of the findings' ... '[h]owever, it may be difficult for researchers to maintain the distinction between amending and distorting their findings' (Welch et. al. 2002: 616).

E-mails of thanks were sent to all participants very shortly after the interview, as well as thanking them on the day. Copies of their transcript went to all participants as soon as they had been completed, with an opportunity to comment. Most acknowledged receipt of the transcript and none asked for amendments or made suggestions for additions. In one case a participant telephoned the researcher and agreed the transcript was an accurate record but wanted further clarification about the anonymising process, he was content with the explanation.

Once the transcripts were complete and sufficient progress made analysing the data, a two-page summary of emerging findings was sent to all participants and further comment was invited. This gave an opportunity to challenge the early analysis, or to suggest additions or refinements. Three responses were received, which commented on the findings, and these were incorporated into the data and its analysis. Acknowledgements of receipt of the summary were sent by other participants. All research participants will receive an electronic copy of the thesis.

## **Ethical considerations**

The University of Liverpool's Code of Ethics (2012) and ethical approval processes were complied with. The research approval required that the interviews were anonymous, which also facilitated access to, and openness of, the research subjects. Anonymity contributed to ensuring the researcher's responsibilities towards research participants 'interests, sensitivities and privacy' (British Sociological Association, 2002: 2-3) was complied with.

To prevent the participants being identified each was allocated a pseudonym. In addition, as only a small number of the officers were from London, the rank designations used outside London were adopted to describe the rank of all participants, hence a chief constable may be an assistant commissioner, a deputy chief constable may be a deputy assistant commissioner and an assistant chief constable may be a commander. The context of the interview could also have identified the participant; therefore, care was taken to ensure the quotes used do not contain information that can identify participants.

Each participant was sent a participant information sheet (Appendix C) in advance of the interview, which set out key information about the study. They were also sent a consent form (Appendix D). Before the interviews started, the participant information sheet and consent form were discussed, and written consent obtained. It was made clear that participation was voluntary and that research subjects could withdraw from the study, without this impacting on their rights. The participant information sheet also provided contact details for the researcher and the University's Research Governance Officer.

The signed consent forms are in a safe in Cheshire and research diaries and manual notes are in a secure filing cabinet at the same location. The audio files and transcripts were uploaded to the University of Liverpool's secure m: drive. Anonymised transcripts were generated for manual coding and subsequently uploaded to NVivo (also stored on the University's secure m: drive).

Questions may be asked about the impact of research funding and of commissioners of research on the objectivity of the researcher or the parameters of the study. Similarly, those providing access to research participants may seek to influence the researcher. This research and PhD was self-funded. The research was not

commissioned, it arose from my interest in police legitimacy. No gatekeepers were involved in obtaining access to research participants, all were approached directly by me. None of the participants placed any preconditions on the interview or its outcome. A further ethical consideration is my previous membership of the elite being studied.

### **The impact of the researcher's former status as an insider**

I was a police officer from 1981 until 2013, an assistant chief constable from 2005 to 2009 and deputy chief constable from 2009 to 2013, including significant periods as temporary and acting chief constable. I served in the Metropolitan Police Service, Merseyside Police and North Wales Police and spent periods seconded to Liverpool City Council and to Her Majesty's Inspectorate of Constabulary (HMIC).

However, I had been retired from the police service for two and a half years when the first interviews were conducted and brought other status sets to the work, notably as a post graduate researcher and experience as a student at four universities. I also continued to work for HMIC as an associate, occasionally for the College of Policing and as a management consultant for a large UK consultancy. Additionally, I have perceptions of policing based on contact (positive and negative) with the police as a member of the public.

To be categorised as either an insider or outsider, in the contrasting terms discussed by Merton (1972) and Lewis (1973) is a false dichotomy. There is, arguably, a continuum between insider and outsider research and few researchers are simply insiders or outsiders and their position may float along this continuum (Hellawell, 2006: 483 and Wegener, 2014: 154); and their status may change as their studies progress (Paechter, 2013: 75). However, the insider/outsider concept provided a useful framework for reflection during this research (Greene, 2014).

I consider myself a distanced insider, although my perceptions fluctuated during the research. At a basic level, I was conscious of sometimes referring to, and thinking of, the police as 'we', whilst at others using 'they' and this reflected my floating position on the continuum. In the academic context, I became increasingly prone to consider myself as distanced from policing and the police. However, an instinct to intervene to challenge illegal or anti-social behaviour, more than one might expect from most

members of the public, remains. I deployed measures to maximise the benefits of my position as a distanced insider, whilst minimising the associated risks; although the techniques used are not dissimilar from those that any researcher should employ.

### **The distanced insider: risks, benefits and mitigation**

In adopting a critical realist stance objectivity was striven for, whilst recognising that this is difficult to achieve. Yet, it is reasonable to pose questions about the risks of subjectivity of the researcher as a former insider (Levi-Strauss, 1966: 126; Serrant-Green, 2002; and Boser 2006:12). These risks were mitigated by continuing reflexivity, which helped retain awareness of my dispositions and preferences, so that they could, at least to an extent, be controlled (Bourdieu and Wacquant, 1992). This reflexivity was supported using a research diary to capture thoughts and observations, as part of a transparent process of reflection, which can be viewed as a key accountability for researchers (Unluer, 2012 and Sprague and Kobryniewicz, 2004: 92).

One of the most effective supporting mechanisms was my relationship with academic supervisors, which encouraged critical thinking and reflexivity (Lee: 2008: 270-271 and Pearson and Kayrooz, 2004). Emerging findings were also exposed to wider academic challenge at seminars and conferences, including work in progress sessions and post graduate conferences at the University of Liverpool and to the British Society of Criminology Conference in 2014 and 2016 and the European Society of Criminology Conference in 2017.

Another risk was that assumptions might be made based on personal experience and understandings as a former insider (Unluer, 2012: 6 and DeLyser, 2001). Although, the risk of making assumptions is not confined to insider researchers. Even where issues appeared obvious it had to be remembered that policing in England and Wales had changed since I retired<sup>13</sup>, and in any case, may look different dependent on the roles, responsibilities and personal experience of each research subject. Taylor (2011: 15) notes that providing research participants with the opportunity to reflect on what

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<sup>13</sup> The introduction of police and crime commissioners happened a few months before I retired from policing and since my retirement the Association of Chief Police Officers was replaced by the National Police Chiefs Council and the College of Policing was established.

they have said in interviews and to review the researcher's written interpretation, can act as an effective method to mitigate the risks of insider research, particularly in relation to assumptions that might be made. This approach was adopted. As noted earlier, each participant was provided with a transcript of their interview and asked to check it for accuracy and for any observations or clarification they wished to add. Later they were provided with a summary of emerging findings and asked to comment on these.

However, the impact of my status on this study depended not only on my perceptions of my position on the insider-outsider continuum but also on the views of my status held by research participants. This could involve power relationships, in part influenced by previous roles, ranks and experiences of both the researcher and participant. This posed potential risks in terms of what participants chose to voice.

Many participants did treat me as, at least to an extent, an insider, as demonstrated by references to shared experiences and history. Such as from a deputy chief constable, 'you know, the things that I guess you and I lived through – the difficult times in terms of what happened in 1985 in XXXX'. Or from a chief constable talking about contrasting performance management styles, 'You had 'X' [a former chief constable] and I had 'Y' [another former chief constable]. If one said 'Green', the other said 'Blue' – a comment that made sense in context and with knowledge of the characters being discussed. Another chief constable also referenced shared history and knowledge of individuals, 'I mean we knew the previous chief constable of X who did not do chief officers any good at all with the way he conducted himself'.

My former status as a chief officer and, in most cases, acquaintance, with the participants did help build rapport and supported an empathetic interaction, the benefits of which were commented on by Holdaway (1983:13) and Bonner and Tolhurst, (2002). However, it is not claimed that this provided privileged access to knowledge, a claim which Merton (1972: 11) critiqued in relation to standpoint epistemologies. It is possible that equally rich data could have been obtained by researchers who were more likely to be viewed as outsiders; as Reiner (1991) illustrated, chief police officers can provide quality data to outsiders.

Being a former insider also assisted in understanding the language used, as Holdaway (1983) and Court and Abbas (2013) found, and helped avoid asking unduly naïve

questions, which could have slowed the process, where time was precious in terms of gathering data. Although, when clarification questions were asked participants were willing to assist.

Care was taken not to assume that former membership of this elite would automatically facilitate access and openness. The issue of legitimacy can be controversial, and I was conscious that a professional discourse (without assuming I knew what this discourse, if it existed, was) might obscure the understandings about the right of police to exercise power being voiced.

I was also prepared to manage hostility (Smith and Pangsapa, 2007: 388). However, the participants appeared to be open and prepared to share not only their views about concepts and policies but also insights into their personal experiences, as was demonstrated by many of the frank accounts they provided, several of which (unfortunately) could not be used as it would have disclosed their identities. All participants were friendly and courteous; although in one interview the early responses were wary and sometimes closed answers were provided to open questions (a contrast with the discursive style and storytelling of the other participants). However, the participant became more expansive as the interview developed, as was noted in the research diary, 'initially difficult to get him to open up' ... 'looked tired. However, opened up as interview developed'.

There was a risk that the interviews could be used as a form of cathartic therapy by participants (Costley, Elliot and Gibbs, 2010) and I was prepared for this. There were elements of catharsis (including some expletives that were temporarily trapped by e-mail filters when a transcript was sent to one participant), notably when giving views on performance management styles and on the competence of some bodies and individuals in governance, oversight or regulatory positions. However, this did not prevent the gathering of quality data, indeed it provided some reassurance that regurgitated official accounts were probably not being provided.

Other potential risks included research subjects using the interviews to obtain information that the researcher should not disclose, notably about other participants (ibid.). Alternatively, they could have unwittingly disclosed confidential information that a researcher should not be party to (Holdaway, 1983: 1-14). Whilst the participants

were open and sometimes very direct, none made improper disclosures. Nor did they seek to obtain information inappropriately.

Overall the benefits of being a former member of the elite outweighed the disadvantages. Notably in relation to access and the building of rapport and understanding of the language and references used by the research participants. The building of rapport was an important part of the interview approach.

The risks, particularly of subjectivity, were controlled by a productive and supportive but challenging relationship with academic supervisors and by use of a research diary. The risks of making assumptions based on personal understandings acquired as a former member of the elite were mitigated by sending summaries of the emerging findings and transcripts to research participants and asking for their comments. Crucially, and without descending into unproductive introspection, I was reflexive. There was no assumption that my status would of itself lead to chief officers revealing their accounts about the right to exercise power, the interview schedule needed to be carefully constructed to facilitate this process.

### **Research themes and the interview schedule**

As discussed in chapter two, central to broad discussions of legitimacy are themes about the *exercise of power* and *the consent*, or dissent, of those over whom power is exercised. The importance of *rules and laws*, and compliance with them, is also a recurrent theme. The degree to which *values* are shared, or not, between those exercising powers and those over whom it is exercised is also prominent. These four themes were selected to be explored during the interviews, as they could provide data to answer the research question.

In chapter three, seven themes emerged from previous studies of police chief officers in England and Wales, that could be linked to the research question:

1. social origins, career paths and social and policing philosophies;
2. accountability;
3. policing by consent;
4. community policing Vs law enforcement view;
5. constabulary independence/operational independence;



6. police performance management; and
7. changes in the senior police voice.

The four themes identified in chapter two and the seven in chapter three were used as a backcloth to the interviews. Although the interviews were intentionally semi-structured, a more detailed framework for the discussions was needed than was offered by these themes alone.

A set of 22 questions was developed from the themes, to guide the participants and researcher through the interview process; this interview schedule (Appendix B) was agreed as part of the University of Liverpool's ethical approval process. The schedule was tested in the first two interviews, which were treated as pilots. After reflection on the pilots a 23<sup>rd</sup> question was added, which directly asked the participant, 'what gives the police the right to exercise power'. This question had been asked spontaneously towards the end of each of the first two interviews and helped to clarify the understandings that had been revealed. Prompts were also added to supplement questions when sufficient data was not emerging. The additional question and prompts are shown in italics in the interview schedule.

Whilst never formally added as a question, at the end of each interview the participant was asked if there was anything else they wished to raise that they had not had the opportunity to discuss. Whilst some did not add anything at this point, most did. Some of these responses proved very useful, notably comments from a chief constable concerning the dilemma that the police service faced in identifying and dealing with would be police officers, or officers seeking promotion, who were drawn to policing because of the opportunities it provided to abuse power.

The theme concerning social origins, career paths and social and policing philosophies, provided an opportunity for non-threatening opening questions, which helped build trust and rapport and provided useful data for analysis. The remaining themes sometimes arose spontaneously during the interviews, without all the planned questions being directly posed. This was anticipated, as the intention was that the interaction should be much closer to a purposeful conversation than a formal interview, that might invite official responses (Mikecz, 2012 and Robertson, 2016). A less directive interview also provided greater opportunity for the voice of participants to be heard.

In the pilot interviews, it was established that the interview could be conducted, and good quality data obtained, in about 90 minutes, although a two-hour appointment was ideal. Participants were generous with their time and most allocated the two-hour appointment that was requested, with the rest providing 90-minute slots. In one case the interview was at the last moment reduced to one hour due to unavoidable demands on the time of the chief officer, however, this participant had thought carefully about the issues she wished to discuss before the interview started and I was slightly more directive than in other interviews. Consequently, a great deal of useful information was still gathered.

Another benefit of the two pilot interviews was that issues, and indeed a dominant theme (protecting the vulnerable), started to emerge that had not been overtly addressed by the planned questions. This provided some reassurance that the interview schedule and structure were not unduly directing the responses and that valuable data was being provided, that shed light on chief police officers' understandings of the right of police to exercise power.

The interview schedule served as a structure for the interviews. Some chief officers went off in different directions and answered planned questions before they were asked. Others, having read the participant information sheet and listened to the brief introduction led the conversation and only limited input was required from the researcher to obtain the data that was needed. Some of the best data was obtained from digressions that were not direct responses to questions. Having gathered the data, the challenge of analysis and interpretation remained.

## **Analysis**

Rapley (2011) looked at four approaches to qualitative data analysis (framework, thematic, interpretative phenomenological and constructivist grounded theory) to offer guidance on how analysis might be conducted. What is striking, perhaps unsurprisingly, is not the differences between these approaches, although they are present, but the similarities. They all require becoming familiar with the detail of the data set whilst keeping in mind a bigger emerging picture, the identification of themes and labelling or coding of these, a process of refining the data, and interpretation and potential explanation. This broad approach was followed. The analysis does not neatly

fall into any one of Rapley's categories, though it has similarities to framework analysis particularly in the focus on managing the data and seeking to summarise it sufficiently to enable interpretation and explanation, whilst staying close to the original data (Ritchie and Spencer, 1994 and; Ritchie, Spencer and O'Connor, 2003). The identification of themes, concepts, patterns and areas of agreement and dissonance and interpretation pervaded the approach adopted. The analysis also sought to establish if there were patterns in terms of the type of chief officer giving particular sorts of accounts.

Mishler (1986) emphasised the importance of audio recording, accurate transcription and systematic analysis. The interviews were audio recorded (with the written and verbal consent of participants) and accurately transcribed, with field notes playing an important part in supplementing the transcription, looking not at just what was said but how it was said (Mikecz, 2012). The field notes encompassed records made contemporaneously and reflections completed shortly afterwards in a research diary. The diary also provided the opportunity to consider how I felt and ponder any obstacles encountered and record ideas as they emerged (as suggested by Spradley, 1979). An example of problems identified was noted in the research diary, '[H]e was candid and indiscreet [although not improper], which will make anonymising the interview interesting!'.

Patton (1999: 1193) advocates four forms of triangulation to enhance reliability and credibility of qualitative data analysis, namely methods triangulation, triangulation of sources, analyst triangulation and theory/perspective triangulation. Two of these forms of triangulation were used. Sources were triangulated by carefully examining the responses of all participants to look for patterns, consistency and conflicting accounts and themes. Triangulation by multiple analysts was adopted, by obtaining feedback from interviewees about the factual accuracy of the records and the emerging findings of the research; by sending participants copies of their transcripts and later a summary of emerging findings and inviting responses to both. This does not imply that participants could veto findings or manipulate them, and none tried to do so. Such responses did provide some insights into the validity of the analysis and elicited further useful information (Patton, 1999: 1195-1196 and Mikecz, 2012).

The analysis was iterative, with the recordings, transcripts and field notes being repeatedly returned to as themes, patterns and links were inductively identified (Silverman, 1993: 117). The same process looked for and carefully considered exceptions, ‘the instances and cases that do not fit within the pattern’ (Patton, 1999: 1192). Areas of agreement and dissonance between chief officers’ understandings of the right to exercise power were observed, identified, described and interpreted. However, the practicalities of the process require further explanation.

### **Transcription, coding and interpretation**

The interviews produced a great deal of data, with the longest interview being one hour and 46 minutes (30 pages of single spaced transcript) and the shortest 56 minutes (14 pages), with most being approximately one and a half hours.

Each interview was listened to within a week of the interview, to start the process of immersing me in the data. I found I was very slow at transcription but was ably supported by a skilled transcriber, who provided the service confidentially and gave me helpful feedback on my interview style.

Completed transcripts were read and the few mistakes corrected, normally limited to police acronyms and jargon and the spelling of names, occasionally requiring me to listen to short sections again to pick up phrases that had not been clear. When content that the transcript was an accurate record of the interview they were sent to the participant, with a covering e-mail, asking for any comments on accuracy or other reflections.

The transcripts were examined to identify patterns, consistency and conflicting accounts and themes; always keeping the primary research question, written on an A3 poster beside my computer, at the forefront of my mind. Initially this was done manually, with handwritten notes and highlighters on transcripts and comments in a notebook, with themes and issues being identified and noted in the margins. Numerous discerning quotes were captured that helped identify the patterns, themes and dissenting voices. The transcripts were read in conjunction with the contemporaneous field notes and the research diary.

An A3 poster was produced, with the main themes and sub themes set out, with a selection of quotes to illustrate the points being made and this was discussed with academic supervisors. This formed a good basis for further analysis. However, the volume of data was difficult to manage. To better organise the data the transcripts were all manually coded again, but this time using QSR NVivo 10. The data was then downloaded into a 'Coding Summary by Node Report'. Nodes being the NVivo phrasing for themes; split into 'parent nodes', which were overarching themes, which helped shape the four analysis chapters and 'nodes' or sub-themes. This report was then exported to a Word document, where the coding was further refined, and comments added, and detailed analysis and interpretation and explanation continued. This was important in supporting critical thinking and formed the basis of the four chapters of analysis. Once the first draft of the analysis chapters was completed a summary of emerging findings was sent to all participants.

Due to the semi-structured nature of the interviews and the way participants' accounts were revealed, it was not possible to use the automated coding options available within NVivo. One cause of this was that many participants provided answers to questions that had not yet been asked very early in the interview (notably the early question about general approaches to policing, which generated extended responses, often negating the need to ask several subsequent questions). Much of this was out of my control and in any case a more rigid approach would not have been desirable, as I was seeking to generate a purposeful conversation, not administer a survey.

## **Conclusion**

Understandings of the right of police to exercise power were at the core of the conversations with chief officers. Questions prompted exploration of how chief officers believe consent can be obtained, retained and identified and examined their attitudes towards law and rules and considered their values. Protection of the public and particularly of the most vulnerable emerged as a major theme, although it had not been overtly addressed by the interview schedule.

Whilst some conceptual discussion was unavoidable, indeed desirable, open questions were posed about the real-life exercise of power by police generally and by the

individuals specifically. This helped reveal chief officers' stories, which illuminate their understandings of the right of police to exercise power.

The stories that the participants used to explain the right of police to exercise power, along with their conduct during these exchanges was recorded for further analysis and interpretation. The analysis process required immersion in the data, manual hand-written notes and coding, followed by coding using NVivo and subsequent refinement of coding, analysis and interpretation. Themes and dominant and dissonant narratives were identified and interpreted. The next four chapters address this analysis and interpretation. The first of these chapters looks at the social and policing backgrounds of the participants and their motivations for joining and remaining in the police service; it also considers change and complexity, which were recurring themes in the interviews. This data is placed in the context of the implications it may have for understandings of the right of police to exercise power.

## **Chapter Five**

### **Context and a Power/Service Paradox**

#### **Introduction**

This chapter acts as a bridge between the legitimacy literature discussed in chapter two, chapter three's exploration of previous research into chief police officers and its social, political and policing context and the analysis of the data gathered for this thesis. The context of the research for this thesis is examined and comparisons drawn with the settings of previous research. Scrutiny of elites, particularly of chief police officers' conduct, and changes to police governance and chief officer accountability are considered. Claims about the influence of new forms of criminality on the use of power, the impact of austerity on chief officers' thinking and an emerging discourse about vulnerability are considered to inform discussions in subsequent chapters. Participants backgrounds and the impact this may have on their approach to power are examined, as are their motivations for joining the police and a potential power/service paradox arising from this is analysed. Claims made by chief officers about the rate of change and growth of complexity in policing are then explored. These issues are analysed to reveal how they may impact on chief officers' understandings of the right of police to exercise power. This sets the scene for chapters six, seven and eight, which scrutinise the three broad ways of understanding the right to exercise power that emerged from the data, namely protecting the public, particularly the most vulnerable; policing by consent; and justifications for the use of power based in law and associated checks and balances. This chapter also points to the key argument that emerges from this thesis, and which is distilled in chapter nine, that the understandings of the right of police to exercise power held by chief police officers are confused, conflicted and convenient.

#### **Scrutiny of elites**

Elites are arguably under increased scrutiny, as illustrated by the attention paid to bankers after the financial crisis of 2008 (Mathiason and Stewart, 2008), the parliamentary expenses scandal (Curtis, 2010), the high pay of vice chancellors (Chakraborty, 2017) and revelations about the alleged predatory sexual behaviour and associated abuse of power by some politicians and members of other elites (Burnett,

2017)<sup>14</sup>. This may reflect wider changes, including a less deferential society (Giddens, 1994) and a decline in trust in more diverse societies (Cook, 2001).

However, concerns about chief police officers' conduct are not new. In the 1970s a Metropolitan Police Commander was gaoled, and the Metropolitan Police Commissioner highlighted the risks of corruption (Mark 1977, 1978). At the start of this century the resignations of Chief Constable Paul Whitehouse in 2001, after a police shooting, and of Chief Constable David Westwood in 2004, following the Soham murders (McLaughlin, 2007: 186) called the competence and judgment of chief officers into question; in both cases the Home Secretary instigated their removal.

Tensions between chief officers and those holding them to account locally are also not new, as shown by the struggles in Merseyside in the 1980s (Simey, 1988). However, the balance of power within the tri-partite structure has altered. Reiner (1991) found that the Home Office held the greatest power in the tri-partite structure. This continued (as set out in chapter three), with incremental changes to legislation, guidance and performance regimes eroding the operational independence of chief officers and power of police authorities. The introduction of PCCs, in The Police Reform and Social Responsibility Act 2011, aimed to shift power towards PCCs, and the chiefs and PCCs interviewed by Roycroft, (2016: 89-119) mainly agree that the scales of power now lean towards PCCs. Wells' (2017) examination of the reduction in attention being given to roads policing also indicates that PCCs are more powerful than police authorities had been, at least in relation to their influence over chief constables' priorities. Yet, the Home Secretary retains an important role in holding chief officers to account, particularly through influence over and funding of, HMIC, the IPCC (now IOPC) and the College of Policing. The Home Secretary's influence includes commissioning inspections, such as on stop and search (HMIC, 2013) and the ladder of interventions used to scrutinise forces that are perceived to be under performing (discussed in chapter eight). Explicit attention to legitimacy (HMIC, 2015) also marked a change of emphasis, from efficiency and effectiveness, which had dominated since Home Office Circular 114/83. Legitimacy was a pillar of the new PEEL (police efficiency, effectiveness and legitimacy) inspections (HMIC, 2016), although HMIC's early

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<sup>14</sup> Abuse of power and position is not confined to members of elite groups. However, individuals who abuse their power and position, but who are not elite group members, are arguably likely to attract less scrutiny than those considered to be members of an elite group.



approach to legitimacy was narrow, inspecting areas where data was readily available (notably stop and search and use of Taser). However, efficiency and effectiveness remained relevant as budgets decreased.

The role of chief officers and other senior officers was also increasingly scrutinised by HMICFRS<sup>15</sup> (2018). Similarly, the attention of the IPCC turned to chief officers (Caless, 2011: 237), its budget grew and concerns about the IPCC's competence and approach were frequently raised by participants in this research. This IPCC focus contributed to the anxieties expressed by participants about the fragility of their positions and is discussed in more detail in chapter eight. The College of Policing also commissioned research looking at the conduct of chief officers (Hales, et. al., 2015). Further, the College took on some governance functions that had been the preserve of chief officers, most notably leadership of what had previously been referred to as business areas, such as crime and uniform policing, which set national guidelines for issues as diverse as murder investigation, public order policing, roads policing and pursuit management. However, the impact of the College of Policing seemed to a marginal issue for participants. These issues are returned to in chapter eight when discussing checks and balances and interpreting chief officers' concerns about their status and how this may influence their understandings of the right to exercise power.

More recently anxieties about chief officers, held by those holding them to account, were fuelled by a series of chief officers being forced to leave the police service. Examples include the resignations of assistant commissioners Andy Hayman in 2007 (Mendick, 2007) and John Yates in 2011 (Dodd et. al., 2011) linked to their relationships with the press and poor judgment and leadership (Colbran, 2017). The Commissioner of the Metropolitan Police, Sir Paul Stephenson, also resigned in 2011 because of his force's 'links with News International at a senior level' (Stephenson, cited by BBC, 2011). Later the dismissals of Chief Constable Sean Price in 2012 (BBC, 2012) and Commander Ali Dizaei in 2013 (BBC, 2013) stoked the fire, both dismissals concerned abuse of power. The suspension of Temporary Chief Constable Stuart Hyde in 2013 (Grierson, 2013) and his subsequent retirement provided more kindling, although cleared of misconduct his behaviour raised issues about his judgment. The resignation

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<sup>15</sup> HMIC expanded to include fire and rescue service inspections in 2017 and the new acronym is HMICFRS. Force inspections played increasing attention to leadership and a national police leadership overview report was produced in 2018.

of Chief Constable Nick Gargan in 2015 (Griffiths, 2015) having been found guilty of eight misconduct charges, and the consequent annulment of his Queen's Police Medal in 2017 (Smith, 2017) raised further concerns about the behaviour of some chief officers.

Participants were conscious of the power of PCCs and elected mayors and the potential this had to place them in a precarious position. An early example being the retirement of Commissioner Sir Ian (now Lord) Blair in 2008, following pressure for him to leave being exerted by the Mayor of London (Caless, 2011: 237). Further instances include the lack of confidence shown in Chief Constable Sir Norman Bettison by prospective PCC candidates following the Hillsborough Inquiry, leading to his retirement in 2012 (BBC, 2012a) and the resignation of Chief Constable Carmel Napier in 2013, which she said resulted from being 'bullied' into it by her PCC, an account contested by the PCC (BBC, 2013a). Participants were aware that the use of power by PCCs might sometimes be arbitrary, illustrated by the suspension of Temporary Chief Constable Neil Rhodes in 2013, who was reinstated following a judicial review, which found the suspension 'irrational and perverse' (Laville, 2013). During the field work for this thesis in 2016 tensions between Chief Constable David Crompton and his PCC (Alan Billings) were building, leading to the Chief's enforced retirement and a judicial review in 2017 finding there 'was no fair or reasonable basis' for his removal (Daily Telegraph, 2017). This case also demonstrated HMIC's limited capacity to balance the power of PCCs. HMCIC Sir Tom Winsor described the actions of PCC Billings, as so 'conspicuously unfair, disproportionate and so unreasonable that I cannot understand how the PCC has reached this view' (BBC, 2016) but this did not prevent the enforced retirement.

Reiner (1991) wrote amid concerns about policing disorder, accountability, corruption and diminishing public confidence. Anxieties about policing disorder and corruption remain, as discussed in HMIC reports *Rules of Engagement* (2011) addressing disorder, and *Integrity Matters* (2015) examining counter corruption capability. The riots of 1981, 1985 and 2011 influenced participants thinking; the 1980s disorders largely being raised in the context of withdrawn consent and being contrasted, by some, with the 2011 riots. Participants recollections of these events revealed their concerns about keeping the peace whilst retaining the support and confidence of local people. Some participants stressed the role they assigned to neighbourhood policing in building public confidence and consent, a view shared by HMIC (HMIC, 2005 and Fisher, 2012). Similar concerns had absorbed Reiner's (1991) participants, demonstrating some continuity between

1981 and 2017. These issues are discussed further when considering consensual policing in chapter seven. A more recent issue for chief officers has been an increasing focus on vulnerability.

## **Vulnerability**

Caless and Tong (2015: 165 - 188) and Roycroft (2016: 61 - 88) found that chief police officers were discussing new types or versions of crime, including a changed terrorist threat, cyber-crime and crimes with a heightened profile, such as child sexual exploitation. These conversations contribute to narratives about the increased complexity and breadth of policing and to an emerging discourse about the, arguably under explored, concept of vulnerability (Brown, 2017). Protecting the vulnerable was not a notable feature of previous chief officer research or central to the research question but it emerged from the data gathered from the 2016 cohort of chief officers interviewed for this thesis. Vulnerability is returned to in chapter six, with discussion of the arguably confused but convenient way it can be constructed and deployed to justify the right of police to exercise power. Conflicts between a vulnerability discourse and explanations for the right of police to use of power based on the hazy concept of policing by consent are discussed further in chapters six and seven.

Vulnerability also featured in the context of austerity, which started with a 20 per cent reduction in central funding between 2011 and 2015 (HMIC, 2013a) and by 2017 had seen the number of police officers fall to the lowest since 1985 (Weinfass, 2017). Whilst finance had been a major issue for policing in the 1970s, leading to the Committee of Inquiry on the Police (Davies, 1979) and subsequent increased budgets, it did not feature as a significant concern in chief officer literature until noted by Caless (2011). Many of the 2016 cohort linked austerity to assessments of threat, harm, risk and vulnerability, which could be viewed as a prioritisation or rationing process. This link was made explicit by Metropolitan Police Deputy Commissioner Sir Craig Mackey in August 2017, ‘vulnerability can manifest itself in a number of ways: people with learning difficulties, a whole range of things, some people for whom English is a second language ... as demand grows you have to have a way of controlling and triaging’ (BBC, 2017).

The combination of concerns about resources and vulnerability can also be seen in HMIC’s (2015a) *PEEL: Police effectiveness (vulnerability) inspections*, which

identified that every force has ‘a stated priority about the importance of vulnerability; or has placed a focus on this in another way ... However, we found a lack of consistency as to how vulnerability is defined’ (ibid. 10), echoing Brown’s (2017) observations about definition. HMIC (2015a) found weaknesses in assessments of vulnerability; although HMIC’s attention in these inspections was limited to domestic abuse and children who were or had been missing. Most forces had adopted the THRIVE model (threat, harm, risk, vulnerability and engagement, see Appendix E) to assist in making decisions about vulnerability (HMIC, 2015a); albeit how much clarity such assessments provides is questionable and is discussed in chapter six.

A vulnerability discourse is not the only change that may influence the way that chief officers think about power now. Another new feature can be found by comparing the backgrounds of contemporary chief officers with those of their predecessors.

### **Participants’ backgrounds**

These chief officers differed from Reiner’s (1991: 57-58) working-class elite. Eleven had parents with professional careers, including a commissioned military officer, vicar, teacher, social worker and managing director. Two parents had been mid ranking police officers. In one case, it was not clear how social background might be described and two participants considered they came from working class backgrounds.

All Reiner’s chiefs were white men. As discussed in chapter four the cohort of participants in 2016 is not a perfect reflection of current chief officers but includes four women<sup>16</sup> and one officer from an ethnic minority background and is reasonably representative of the wider elite. This group was also different in what it did not voice. The law and order rhetoric of many of Reiner’s chiefs (1991: 193-220) was absent, as were the ‘mavericks’ noted by Loader and Mulcahy (2001). Indeed, the language of consent, proportionality and human rights was commonly used by participants in 2016 and they appeared to be socially liberal. This assessment is not dissimilar from Punch’s (2009: 233-234) judgment that:

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<sup>16</sup> In November 2017 CC Sara Thornton, Chair of the NPCC, reported that 27 per cent of police chief officers were women and that 29 per cent of all police officers were women (Garrod, 2017).

Policing elites in recent years have become relatively liberal in the UK – and in the Netherlands. The consent paradigm espoused by these leaders – geared to service to the public, consultation, rights, due process and integrity is, however, difficult to maintain when the heat is on from politicians and the populist media.

The extent to which this apparent change in attitudes reflects societal changes, rather than a shift in the background and socialisation of chief officers is not clear. Loader and Mulcahy (2001) postulated a link between the decline in chief officers expressed authoritarian views and a waning of authoritarian political rhetoric. Elements of political and public authoritarian rhetoric have, arguably, returned in political debate, as can be seen in proposals for more intrusive powers in response to the perceived terrorist threat; Theresa May's (2010) narrow view of the police role (which has echoes of the narrow view held by a significant minority of the chief constables interviewed by Reiner [1991]) and; anger about child sexual exploitation, following revelations such as those concerning Rotherham (Jay, 2013) and Jimmy Savile (Halliday, 2014). Given this, one might expect some participants to have used elements of the authoritarian language of law and order, but this did not surface in the interviews.

None of Reiner's chiefs (1991: 59-60) had degrees before they joined the police and only a quarter obtained degrees subsequently; in the 2016 cohort only one did not have a degree. Three did not have degrees before joining the police service but acquired them later. Seven had a master's degree, one without a first degree, all the master's degrees had been gained whilst in the police and one participant was working towards a PhD. The universities attended included Oxford, Cambridge and Durham and most studied at Russell Group universities. Four had attended independent schools and six went to grammar schools (one went to both). Three had been to comprehensive schools. In three cases, it was not clear what kind of secondary school had been attended. Phelan, Link, Steuve and Moore (1995: 126) found that 'education socializes students to the "official culture" which in the United States includes values of equal opportunity and equal respect', although not equal outcomes. Phelan et. al. (1995) were not looking at chief police officers, their concern was the impact of education on social attitudes. However, the relevance of their research lies in providing a plausible,

if partial, explanation for the apparently liberal views expressed by the current cohort of well-educated chief officers.

### **Motivations for joining the police**

Motivations for joining the police fell into two broad categories, the potential for excitement, and public service; in all but two cases both excitement and public service were cited. A predilection for excitement is not necessarily the same as a fondness for power. However, excitement was, for some, associated with authority or power and the ability to make a difference. An attraction to power was also evident in many responses as a necessary element to intervene effectively as a police officer to serve the public (or publics). For others the excitement and variation contrasted with alternative careers they had started or considered. CC Paul recalled:

My first night as a sergeant on a response group was during the XXX riots, so taking over a serial of officers who I had met for the first time in the streets of XXX amid petrol bombs that were thrown at us, cars driven at us – I suppose learning to lead people in extremis – it's something – I loved that sort of policing.

The lure of authority and the ability this gave to make a difference was noted by DCC Anthony, who was also attracted by the structure offered:

I'm pre-suited to a fairly structured – fairly structured organisation context to work in, which the police certainly offers ... it's about a fairly direct influence on people's lives through the decisions you make – intervening, that sort of thing ... there's something about power in a sense but I wouldn't at the time have characterised it like that.

CC John's response was typical, 'in policing - that unpredictability and variety – there is no job like it in the world.' CC Simon contrasted policing with his previous job:

I was a week short of my XXth birthday when I joined, having worked in XXX for about nine months and been really bored by it, so it was an exciting job and I can always remember not even wanting a rest day to take a day off, never mind taking annual leave. I feel different about that now!

CC Phil illustrates the combined attractions of public service and excitement and there are echoes of Reiner's (2010: 186-202) discussion of the potentially legitimating role of fictional portrayals of policing, though one of CC Phil's fictional choices is not a model of rectitude:

I was fundamentally driven, as I say, by the public service, sort of, orientation and ... the fact that the job looked pretty exciting from what I could see on the TV. ... So, it was those two. I was too young for Dixon of Dock Green as I recall it, I think but it was – yeah. So, I think it was a mixture of, you know, the real sort of values of being associated with being a community cop, that sort of – but also sat alongside that, some of the excitement that was perhaps displayed through programmes like The Sweeney.

The second motivation was public service, which was widely associated with tackling unfairness and making a difference to people's lives, particularly by providing protection; as discussed by CC Alan:

It's actually to serve. Well, one, I needed a job but two is actually to serve. It is actually to serve the public. And I couldn't think of anything worse than doing a job that all it did was give me an income – very important, but all it did was give me an income, but I didn't see any benefit at the end of it. I actually wanted to make a difference to people's lives – a positive difference to people's lives and make a difference to the society in which I lived. And that has never changed.

Other participants echoed this, 'a, kind of, public service ethos that's pretty strong for me' (DCC Anthony); 'I think some of it is fundamentally me, because I can see some of that fairness and rights stuff even when I was right back at school' (DCC Susan) and; '[I] had that idealistic view of wanting to 'do my bit' for society and make a difference' (CC Trudy).

However, CC Tom noted that his view of public service had changed, 'as a younger officer ... I was very much in the – this is the police force – we are not a police service. But as you get older, and hopefully wiser, you realise that, whether you like it or not, we're a social service.'

These were not the only motivations, a CC and an ACC noted that getting a job and pay played a part and two professed to having drifted into policing. There was a notable outlier; although no questions were posed about faith one participant raised religion as their primary motivation and guide to policing:

my own learning link to, in particular, faith and theology, and that sense of service, is really important to me in terms of how I conduct my business in work and how I see the privilege of what people would call a powerful position but I certainly don't see it as powerful – I see it as a responsibility which is sometimes a heavy responsibility. But my background and sense of service is what I fall back on to allow me to make some of those difficult decisions.

### **A power/service paradox?**

It is possible to be attracted to, and enjoy, a career that can be exciting and requires the exercise of authority and power, whilst also valuing public service and gaining satisfaction from delivering it. However, some participants highlighted risks and a possible paradox. CC Alan commented:

I think positions of power attract people who like power. Now if you walk around any of my police stations now – please feel free – you will meet a great deal of people whose motivation is giving great service. But I would suggest that ... the closer to the top you got, in this or any other profession, the closer you will be to people who either like power or have become a little tipsy on it because they're people who didn't expect to have it and now have it and rather like it.

DCC Anthony recalled, 'the thing that really struck me ... were two things really. One is the feeling of invulnerability that grew up – the feeling that 'because of who I am, or what I am – and/or what I am, I can do this and who is going to question me?' CC Rachel also reflected on the darker side of the lure of power:

there's an interesting question we don't ask ourselves enough, both people who want to join the police and I guess, arguably, also, we should ask it about those who want to leave the police. And that's – policing is a really attractive career if – if you are a bully, if you are power-crazed, if you are a sexual predator – you



know, there is a whole range of pretty unpleasant personality traits which make policing look like a really attractive career – certainly the way it is seen from outside currently. And inside, if you have an old – what I would call, an old version of what being a chief officer or superintendent – whatever it is, having climbed the slippery post. If you define that in fairly old-fashioned terms, then, if you're, I don't know, authoritarian, manipulative, like to control, like to bully, then you want to be one of the bosses, don't you – rather than one of the – the front line or, you know, one of the constables. So, how can we eliminate those people or those traits from being successful in either joining us and then climbing the pole ... we can't all sit around on bean bags all the time, or whatever stereotype which the antithesis of that is. But you can get some pretty nasty people in policing.

There are echoes of Holdaway's (1983) observations about the risks of a police culture that puts a high value on excitement and action and attracts people with this predilection. Skolnick (1966) argued that the experience of policing, notably feelings of danger and isolation, shapes the attitude of officers and they develop personalities, which tend to value excitement and action. This research does not provide firm evidence on whether police officers are predisposed to excitement, or alternatively develop this trait whilst serving. Indeed, it is possible that both an innate attraction to exhilaration, and the experience of policing, may help shape the value that chief officers put on excitement, action and power. However, excitement, authority and public service, to varying degrees, played an important part in attracting them to policing. It would be unwise to suggest that wider conclusions about police culture or personality could be drawn from this small sample, particularly as this group is probably not typical of the wider police service, in which there are a variety of cultures or sub-cultures (Foster, 2003 and Reiner, 2010). The career paths taken by chief officers may also influence the cultures they work in and their understandings of the right to exercise power.

## **Career**

Participants had a wide range of police backgrounds, some serving only in largely urban forces, others just in predominantly rural areas and some in both. Five had only served in one force, although most had moved during their service and several had

experiences of secondments, such as to HMIC, the National Crime Agency or Serious and Organised Crime Agency, Home Office or elsewhere in the Civil Service.

All had completed the Strategic Command Course (previously labelled the Senior Command Course); this was not the case for Reiner's (1991) cohort. The majority were products of accelerated promotion through the Special Course or its replacement, the High Potential Development Scheme, and/or had been highlighted and been paid for through fulltime degrees by the Bramshill Scholarship scheme<sup>17</sup>. There was a mix of specialisms, whilst all had uniform experience some had specialised as detectives and others spent considerable time as firearms and/or public order commanders. Others served for lengthy periods in local policing, community relations and partnership roles and a few had expertise in counter terrorist policing.

Reiner (1991: 303-340) made considerable play of the impact of the type of career on the approach adopted by chief constables. With one exception (a very experienced public order commander, whose views about the right to exercise power relied heavily on law, with arguments relating to consent and public protection being subsidiary) it was difficult to discern differing approaches to policing, or patterns in understandings of the right to exercise power, based on career history. It is possible that the socialisation processes of contemporary policing (described above), including changes in roles and shared experiences of training, have diluted the impact of career specialisms on the views of chief officers. This may reflect the development of a more coherent and consistent (or bland) approach (Savage, Charman and Cope, 2004), and in part may explain the demise of the maverick senior voices noted by Loader and Mulcahy (2001 and 2001a).

## **Change**

Changes to how power is used was a persistent theme. Participants reported that chief officers were, generally, more careful and likely to consider the views of others than their predecessors. However, they were not necessarily well placed to make such

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<sup>17</sup> Bramshill was the former location of the Police Staff College. The Bramshill Scholarship scheme (which funded some serving police officers who were considered to have potential to excel, to attend university full time whilst being paid as police officers) has not operated for several years.

judgments, as CC Alan noted, 'I work more closely with them now than I did as a junior officer'. Although some participants had worked as staff officers to previous chief officers and may have had more detailed insights. Why this apparent change happened was not explained by participants but may have been influenced by a shift in political direction, particularly in the emphasis on partnership work and collaborative training, which is not new but accelerated after The Crime and Disorder Act 1998 (Phillips et. al. 2002). The reported change may also reflect anxieties about status and job tenure and a perceived need to hold colleagues and partners close, to manage the degree of external scrutiny that was discussed earlier in this chapter and which is returned to in chapter eight.

The suggestion that the use of power is not only more collaborative but also more considered may reflect the growth of rights-based approaches and associated legislation, notably The Human Right Act 1988 and consequent training and operational changes (Neyroud and Beckley, 2001). However, the possibility that participants are prone to consider they are more reasonable than predecessors, without firm evidence to support this, cannot be discounted. The views of CC Alan were typical:

[I] think we see a lot more judicious use of power – much more considered decision making, and I do see a much greater willingness among chief officers, than I perceived before – bearing in mind, I work more closely with them now than I did as a junior officer. But I see much more willingness now among chief officers to actually say 'I am making this decision because'... rather than 'I am making this decision because I am the Chief.'

This was echoed by CC Phil, 'with a few exceptions ... I think chiefs have become more likely to exercise their power from a consensual point of view and seeking to get support for what they are doing from their immediate teams and others within the organisation, rather than trying to dictate it.' DCC Susan perceived a similar change, 'I think it is far less command and control. I – you, now, I still think there is quite a lot of control in it but far less – it's far more collaborative leadership.'

Most reported that their approach to power altered during their careers. The extent to which this was due to personal change or was a function of the different lens afforded by a senior position, or of wider changes in policing or society, is not clear. ACC Bill's view was typical:

my whole view of policing has actually changed completely from when I joined ... I came into what was a very regimented organisation ... [police] had the philosophy that, sort of, the police knew best, and this was the way forward and, you know, we had a job to do which was keep law and order and – and that was it ... I think I have gone on a bit of a journey and probably my views when I first joined the police are very, very different to the views I've now got.

It was suggested that society has changed, and this may influence how and why power is used. ACC Bill noted that 'the world was a lot more violent place when I actually joined' and suggested that police reflected that in the way power was used. Whether England and Wales were more violent in the 1980s is questionable and crime recorded by police is not a reliable indicator, in part due to changes in recording practice and guidance and gaming of the system (Eterno and Silverman, 2012 and Pantak, 2017).

ACC Karen also noted that the use of power altered to address wider changes:

we have to adapt as a service. And that is, in terms of learning from our mistakes, so what might have been appropriate 20 or 30 years ago in terms of proportionality, use of power, might have been right at that time. But society changes and so, in terms of policing, that changes as well.

CC Trudy suggested a more questioning society had implications for how police use power, 'that people's awareness and therefore everything is – the view that if it is not transparent, it is not in the public domain, it's somehow bent. Freedom of information – massive. Because that leads to media scrutiny and media coverage.' This reflects the proposition that wider societal change influences police culture and practice (Bacon, 2014 and Chan, 1996), and echoes Giddens' (1991) observations about a decline in deference.

Changes in the attitudes of officers more generally were commented on, CC Tom was succinct, 'that's the way the job was: "Lock 'em up. They're all bugs – lock them up." That's the service I joined.'

CC John reflected on the impact of use of power in public order policing on how police are overseen. His assertions about changes in level of trust are debatable but they reveal an anxiety about legitimacy and an apparent acceptance of a need for a more tempered

and monitored use of police power, particularly in the wake of media and public scrutiny of contentious exercises of power:

the police were held in high regard when I joined and that was often misplaced. And I think we have created for ourselves, through many failed cases, and we are going to get more of this now. So, if you look at how Hillsborough gets reported, about how Orgreave gets reported, we're going to get a discussion again around the miners' strike, we have got more of that to come back in, about what happened in the 1980s. If you look at how we dealt with things back then, we dealt with them in a different way, but the public trusted us. I'm not sure that they'd trust us to do it in the same way now and I think, as a consequence, we have had to have higher safeguards and scrutiny and review.

Safeguards and checks and balances and their impact on understandings of the right to exercise power are discussed in chapter eight and chief officers' concerns about past failures and their impact on legitimacy are examined in chapter six.

Participants consistently commented on changes to policing, in terms of criminal challenges and breadth of the task. These suggested shifts may alter how power is understood and used, as CC Greg illustrated:

given that £[X] million, I would say I want to spend it on more counter-terrorism and firearms. We need to be more robust to be able to respond to Paris and Brussels. ... The increase in reporting of serious sexual offences, the different way we investigate it now, is just going through the roof.

Changes in demands were also discussed by DCC James, 'the calls that are crime related into our control room have been as low as 11%. So, when I joined the police, it was 85 crime – the public – catch bad people'. Several participants argued this led to greater complexity, CC Simon commented:

forget the days when you and I joined, when the offender lived two doors away or round the corner and all you needed to do was go and get a statement off your victim or your witness, put a file into CPS<sup>18</sup> and off you went. ... There is just

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<sup>18</sup> Actually, the Crown Prosecution Service (CPS) did not exist when I joined the Police Service and files were mainly completed in manuscript and on manual type writers. Therefore (arguably) the process of prosecution, particularly for less serious offences (with little digital evidence), was more time consuming for police officers, although not necessarily more complicated, than it is now.

a real complexity about the investigation that makes the simplicity of the investigation 30 or 40 years ago seem, you know, a world apart.

Overall, when participants considered changes to how power is used, the tone was optimistic but possibly rose tinted, as put, perhaps polemically, by CC Tom:

the great paradox policing today is, we are light years ahead of where we were 40 years ago in terms of standards but if you read the Daily Mail and some other popular publications, you'd think it was the complete converse.

Although CC Tom did not provide a solution to the paradox he posed. ACC Chris provided a counterpoint and a suggestion that (at least some) chief officers are not complacent about the impact of contemporary use of power:

I do have some underlying concerns about policing protests and – and, you know, if – the stuff that we are doing nationally around fracking and the – how the public see our role in enabling exploration and extraction through fracking and whether that is going to be harmful to the public – things like that are going to be harmful to the public's perception of us in the long term.

Similarly, CC Alan was concerned about the policing of protests about wind farms and the difficulties of police keeping the peace when public opinion is divided, '[A]s you drive through you will see that, you'll see the signs up: "No more windfarms", "more windfarms". It's – there is a split there'. This arguably highlights the complexities of using power in a society strewn with competing demands.

### **Complexity and reflecting on the use of power**

The increasing complexity of policing, often related to societal changes, was a recurrent theme. Suggested implications included blunt exercises of power being less effective and complexity extending to decisions about how and when to use power and who to use it for and over whom. CC Greg provided a specific example, 'it's the child exploitation en masse – you are not going to arrest your way out of this one. The power is not the silver bullet.' CC Simon also used less visible crime to illustrate the complexity of contemporary policing, 'honour-based violence, forced marriage, FGM – those, you know, crimes that actually aren't as visible but, as I say, higher risk, and actually have

attached to them real complexity in terms of their investigation.’ There is further discussion of changes in crime, including cybercrime, when discussing vulnerability in chapter six. CC Trudy related complexity directly to the use of power:

How do you assess whether something is reasonable? So, if you want to – you know, you have these rights but is it reasonable for you to want to exercise them continually in the same location, regardless of the impact on the other people? What about their rights? And how do you balance the two lots of rights? And it’s – when you involve the money in it, it becomes even more complicated because XXXX [a force spending a great deal on policing demonstrations] which they’re then not able to use for policing their communities. It’s not as clear and the communities are probably not as aware of it but there’s still a legitimacy challenge of whose rights are you prioritising over whom.

Speaking about a 1990s industrial dispute, CC Simon illustrated that complex decisions about use of power are not new:

That was an interesting one when you looked at the power relationship when you looked at the [employers] and the [workers] themselves, who I have to say, I think at times were treated quite badly. But there was an interesting relationship that I think we, the police, had with them, you know, in terms of lawful protest but I think actually, allowing the business to continue. So that was an interesting one. There was an exercise in power there – that’s for sure.

Despite the suggested increasing complexity, most participants said that opportunities to reflect on the right to exercise power were limited, particularly once they became chief officers. Although, in specific operational areas, notably firearms, public order and counter terrorism, training is provided. However, as CC Alan noted, some of this training could be interpreted as defensive and might lead to inappropriate risk averse behaviours:

a lot of the training that we have had around decision making has been around recording decision making for subsequent inquiries, rather than – rather than, if you like, a review of, well, what was supposed to happen, what actually happened, what was the difference and so on, which would be really helpful. It seemed to be very much around let’s try and avoid some form of legal action.

CC Paul was typical in commenting on the paucity of training and development opportunities, '[T]here is no finishing school for chief constables. There is no – no training for you, other than a little bit of continuous professional development ... there's nothing there for – once you get past ACC, DCC, chief – there is nothing.'

CC Phil also considered there was a need for more reflection:

I don't tend to think about power at all ... the only time I think about power is when – when I have a personal engagement with a member of the public, either out on patrol or when I am stopping them ... I think the service is confused around this notion of legitimacy. I don't think it's – it's not in the conversation as much as it ought to be.

An alternative perspective was provided by ACC Chris, in an e-mail (29<sup>th</sup> December 2016), in response to a summary of emerging findings sent to all participants:

[the exercise of power] is discussed to a degree in command training; particularly the Gold Public Order Command course which places great emphasis on the need to balance the rights of the individual and the State and often two sets of individual groups, one of whom often feels that the State is using force unfairly against them.

However, beyond firearms, public order and counter terrorist command training (and CCs rarely remain accredited in these areas and not all DCCs and ACCs are trained) there are limited opportunities for structured consideration of the exercise of power. Although, there was a degree of unstructured personal reflection on the use of power, as CC Alan noted:

I think self-questioning is really important. Self-doubt. I actually think self-doubt is great, in some cases. I think you do need to continue to reflect 'am I doing the right thing?' You need to continue to reflect on these things – that's why we have all got grey hair.

DCC Susan picked up the same theme, 'I ask XXXX [her chief constable] quite a lot to go through some of the thinking on things and just, sort of, question why I have done something. Particularly if, you know, it is mulling over – so we, you know, - we do do that. But probably not as much as we ought to.'



There was little to suggest that the Strategic Command Course, a rite of passage for all participants, provided significant opportunities to reflect on the right to exercise power. DCC Anthony was forthright:

I think SCC's awful – was awful – awful ... I thought SCC did more to foster a feeling of elitism and arrogance about your place in the world – certainly in the organisation, if not actually in the world, than was ever healthy. The parade of chiefs coming through and posturing and telling us how wonderful they were and the good practice that they did and all that.

A more recent attendee, ACC Karen, held an alternative but isolated view:

the leadership training and Strategic Command Course that I have received and felt that it really did have a huge impact on me and I learnt a hell of a lot, then the seeds planted is around constantly reflecting and learning and not standing still ... the golden thread throughout the Strategic Command Course was all about ethics.

Most felt that there were insufficient opportunities for reflection; echoing Goode and Lumsden's (2016) finding that managerial level police officers tend not to have, or take, sufficient time, to reflect and that this might come from a culture percolating up from lower ranks, that values action and quick decisions and does not emphasise reflection.

## **Conclusion**

Participants were well educated and predominantly from middle class backgrounds. They had been attracted to policing by a sense of public service and the lure of excitement, which could be associated with the authority and power inherent to policing; these twin attractions pose a potential paradox when considering how chief officers understand the right to exercise power. They discussed how changes in society, policing, criminality and personal change, influenced their approach to power. Participants reported increasing complexity in decisions about the use of power, yet opportunities to reflect on the right to exercise power were limited. These threads of data will be woven together with the analysis of the three broad understandings of the right to exercise power, which emerged from this research, in the following chapters. The first to be addressed is a justification of the right to exercise power based on a duty to protect people, particularly the most vulnerable.

## **Chapter Six**

### **Protecting people, particularly the most vulnerable: a convenient construct?**

#### **Introduction**

Chapter five provided the foundation for detailed discussion of the three broad understandings of the right of police to exercise power, held by chief police officers, that emerged from this research. This chapter builds on this by analysing understandings of this right which are based on a duty to use power to protect people, particularly the most vulnerable in society. Links with historical justifications of the right of police to exercise power to protect the public are identified and tensions with understandings related to policing by consent are discussed. The ambiguity and confusion surrounding vulnerability, in a policing context, and the implications this has for how chief police officers understand and explain the right to exercise power are explored. The contested benefits, and potentially unintended consequences, of threat, harm and risk assessments used to identify vulnerability and support decisions about police priorities, including how to use power, are considered. The drivers for this recent focus on protecting the most vulnerable are examined, including the concept's convenient function as a prioritisation or rationing process and its utility for legitimating narratives about choices made by chief officers, including how they use power. Links between justifications for using power based on protecting the vulnerable and underlying concerns about police legitimacy and managing competing interests are explored. The proposition that this apparent focus on using power to protect people, particularly the most vulnerable, may reflect new facets of policing is also considered.

#### **A duty to protect and a vulnerability discourse**

An understanding of a right and duty to exercise power to protect the public, drawing on the principle objects of policing set out by Rowan and Mayne, the first Commissioners of the Metropolitan Police, in 1829, namely 'the prevention of crime' ... 'security of person and property' ... and 'public tranquillity' (Metropolitan Police Service, 1985: 10 and Emsley, 2014: 12, based on the original source of *The Times*,

25 September 1829) was arguably to be expected from the chief officers interviewed for this research. Indeed, similar duties are contained in the current attestation for constables (also referred to as the policing oath, see section 83 of The Police Reform Act, 2002). However, this chapter will show that participants claimed to be using power particularly to protect vulnerable people; this had not been a notable theme in previous research into chief officers (see chapter three) or featured significantly in broader discussions of legitimacy (see chapter two). Indeed, as recently as 2008 *The Review of Policing, Final Report* (Flannagan, 2008) - which is returned to later in this chapter - had little to say about vulnerability. Although the threat, harm and risk process Flannagan (2008) advocated has been appropriated and expanded on for the identification of vulnerability, notably in the adoption by forces across England and Wales of the THRIVE (threat, harm, risk, investigation, vulnerability and engagement) model (HMIC, 2015a and Appendix E). This thesis has not reviewed in detail the academic literature on vulnerability, but it is interesting to note that the Independent Police Commission Report (2013) did not identify protecting the vulnerable as a key purpose for policing and it also did not feature in the substantial contributions from academics that supported it (Brown, ed. 2014). Consequently, vulnerability was not directly addressed by the interview schedule (Appendix B). As a researcher and a former member of the elite being studied, I was not surprised that protecting people featured as a justification for the use of police power. However, I did not expect the level of emphasis on protecting the vulnerable that emerged from the data. I also did not anticipate that the traditional duties of preventing crime and protecting people and property more generally<sup>19</sup> would receive relatively little attention in the responses of participants.

Perhaps I should not have been surprised. As discussed in chapter five there has been a growing discourse about vulnerability and public protection, which has not been confined to policing (Brown, 2017 and Pratt, 2017) but has increasingly permeated discussions of policing, as illustrated by HMIC's (2015a and 2016) and The College of Policing's (2016 and 2016a) focus on vulnerability.

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<sup>19</sup> Principle 1 of The Peelian Principles (Roycroft, 2016: 205), albeit these Principles appear to be a mid-twentieth century invention (Lentz and Chaires, 2007). Roycroft (2016) does not identify his source for The Principles. Emsley (2014: 13) also sets out the Principles and convincingly argues that they were invented more than 100 years after the Metropolitan Police was created.

Similarly, vulnerability was included in the *Policing Vision 2025* (APCC, 2016: 4) produced by the National Police Chiefs' Council (NPCC) and Association of Police and Crime Commissioners' (APCC):

1.5 Reducing crime and protecting the vulnerable are core priorities for the police service.

Both the *Policing Vision 2025* and The College of Policing's (2016) guidance were published after the fieldwork for this thesis were concluded. However, there are similarities to the ways vulnerability was talked about by participants in this research. Whether the College, NPCC and APCC were reflecting a growing concern amongst senior officers about vulnerability, or were pushing the agenda, or a mix of both was happening, is not clear.

In her longitudinal study of police recruits Charman (2017) identified that the most junior officers in England were also increasingly viewing safeguarding vulnerable people as a central function of policing; even if some saw this as less attractive than the perceived crime fighting role that had drawn them to policing. This may, as Charman (2017) suggests, partly reflect a change in what police do, as they plug gaps left by other services as funding falls. Arguably police have always filled holes left by other agencies, particularly when there is a need to 'do something now!' (Bittner, 1974: 30). However, recent reductions in funding across the public sector may have increased the number of things that police need to do urgently and altered, to an extent, the activities undertaken by police; as was argued by Vitale (2017), who focused on the USA but noted similar, if apparently less drastic, impacts in the UK.

Charman (2017) found that her cohort of constables were not clear about who the most vulnerable are or how these judgments should be reached and, as will be discussed later in this chapter, the same can be said of participants in this research. Whether the change in the views of recruits was influenced by the altered rhetoric of chief officers is not clear. It is also possible that the changed emphasis of chief officers reflects fresh challenges confronting more junior officers. This chapter will explore what else might lie behind the rhetoric, including concerns about police legitimacy and the dilemmas posed by competing demands and interests.

### **Policing purpose and the convenient ambiguity of vulnerability**

Understandings of the right to exercise power to protect people, particularly the most vulnerable, were often raised when participants were asked to outline what they thought the purpose or mission of policing was. Eight participants explicitly linked policing purpose with the right to exercise power and it was implicit in the responses of the other participants. Responses from two chief constables were typical:

CC Simon: I am, I hope, crystal clear on the mission or purpose of policing, which is to protect people – to keep them safe from harm. And especially, the most vulnerable in our societies.

CC Greg: if you ask me what policing is – it is as simple as protecting vulnerable people and bringing to justice those people that cause the harm that make people vulnerable in the first place. It is not binary – it is never that straight forward because sometimes the people causing the harm are the vulnerable people and vice versa.

CC Greg's understanding was slightly more nuanced than CC Simon's. However (whilst recognising that leaders may try to distil complex issues into simple messages for rhetorical effect) his suggestion that policing purpose is 'simple' is as contestable as Simon's claim that it is 'crystal clear'. Indeed, these accounts demonstrate a significant change of emphasis from those of their predecessors, who did not articulate protection of the most vulnerable as a key element of the policing mission (Reiner, 1991; Savage, Charman and Cope, 2000; Loader and Mulcahy, 2001 and 2001(a); and Caless, 2011).

DCC Anthony, implicitly adopting a Utilitarian appeal to the greater good (Mill, 1962 [1861]), linked policing purpose directly with police interventions and the use of power, 'we are dealing with some of the most vulnerable, in some of the most difficult circumstances, we have huge, huge potential to intervene for good.' Whilst DCC James reflected on what he saw as changed priorities and consequently altered approaches to what police do, 'we have moved from foot patrol – permanent foot patrol – crime, to a service that focussed heavily on vulnerability and looks at, generally, invisible threats – CSE [child sexual exploitation].'

CC Rachel was the clearest in associating the use of police power to protect the vulnerable with the power of the State and implicitly with a Hobbesian (1968 [1651])

duty for the Sovereign to provide protection and she concluded with a, possibly rhetorical, question:

I think we exercise power that is given to us by the state on behalf of the public and I suppose, in particular, to protect those who are most vulnerable, who are least able, for whatever reason, to protect themselves. So, I – I suppose I would like to see us as agents of, kind of, social justice really, which may be a bit grandiose – it often doesn't feel like that, you know, when you are rolling in the gutter with a drunk. ... and I suppose, you know, the powerful can look – are more able to look after themselves and if we don't protect the vulnerable, there isn't anyone else there for them is there?

CC Rachel's assertion that 'the powerful can look ... after themselves' is not self-evident; indeed, vulnerability can be argued to be inherent to the human condition (Fineman, 2008). Debatably the creation of police forces across England and Wales in the nineteenth century was a response from a vulnerable but powerful elite, who felt threatened by a developing and discontented working-class, yet the working-class was in turn both plagued and (to an extent) protected by the new police, or 'blue locusts' (Storch, 1975). In a contemporary context aggravated burglary (sometimes involving extreme violence to extract information about the location of valuables) can be targeted at the wealthy, who could be categorised as powerful but are, nonetheless, vulnerable to this form of crime and may need police protection. CC Rachel's suggestion that police should act as agents of 'social justice' echoes Reiner's (2016) argument that formal accountability mechanisms are an insufficient restraint on police power and need to be underpinned by a police commitment to human rights and social justice.

Some chief officers provided clues to the impetus for this changed perspective, identifying other bodies prioritising vulnerability; notably the National Crime Agency (NCA) producing assessments that inform national priorities, HMIC and The College of Policing, with the Home Office influencing the agendas of all three bodies, by controlling funding and commissioning work (particularly HMIC inspections) and through the Strategic Policing Requirement (Home Office, 2015: 7). CC Phil suggested that this leads to tension between locally and nationally expressed priorities for the police. He also touched on potential consequent conflicts between claims about the right to exercise power founded on consent and those based on protecting the most vulnerable

in society. CC Phil's comments, below, reflect concerns about balancing competing interests and the consequences for police legitimacy of failing to fulfil public demands:

We also know there are further disclosures coming from the National Crime Agency – internationally for example for CSE. We are – the potential we face is putting more resources into those areas, and we are going to have to do that, certainly to a degree. Those resources are only going to come from somewhere and they are likely to be local policing services and front-line policing and then that – marrying up that public expectation around physical presence and focussing on things they want us to focus on, as against to actually responding to vulnerability and protecting in other respects, is going to take even more of a communication and messaging exercise and they could view that as actually, you know, us not responding to what they think are priority and therefore, perhaps taking a different view on whether we are actually policing with their support – consent.

The ambiguity about what vulnerability meant was tackled by ACC Chris, [there is] 'a risk that we use the term [vulnerability] as a sort of collective noun to describe a problem that we have got in resourcing.' This can be interpreted as vulnerability being used as a convenient legitimating clothes rack, which enables chief officers, and potentially PCCs and the Home Office, to dress up their choices, including decisions about how power is used; with the intention of making these decisions appear acceptable and legitimate to most people.

CC Trudy seems to suggest that the notion of vulnerability is so broad as to lose meaning but again there appears to be a subtext:

forgive me, because I start to sound old at this point, but it is that – that thing now of everybody is – seems to be vulnerable. So, as society now wants somebody always to be able to step in and look after somebody and also to be responsible and accountable ... So, I think – it's an interesting question, isn't it? Are more people more vulnerable now than they were 30 years ago? Or are we just more aware, more risk averse? ... that emotional thing of what people view as harm is quite hard and very, very subjective.

CC Trudy's remarks can also be interpreted, similarly to the preceding observations from CC Phil and ACC Chris, as a commentary on the difficulty of servicing competing

interests and demands. CC Trudy also appears to be alluding to the language of vulnerability being used, or misused, to justify decisions about which interests are served. There are parallels with Jefferson and Grimshaw's (1984: 68) critique, which argued that 'most "democratic" demands are reduced by chief officers to "special" or "sectional" pleading', allowing such demands to be rejected when they do not match their preferred priorities. The contemporary version, using vulnerability, does not necessarily dismiss 'democratic' demands as partisan but rather portrays them as less serious, as parochial and of lower overall public interest than meeting the needs of the most vulnerable. More bluntly the very ambiguity of the concept of vulnerability may allow chief officers to pursue their own agendas; although it could be used by PCCs or the Home Office for the same purpose.

The ambiguity, subjectivity and difficulty in defining vulnerability was also addressed by CC Simon, 'we the Service are still getting our heads around rebalancing and trying to be really clear about what constitutes risk, threat, harm on vulnerability.' ACC Karen inferred that police are in a privileged position to make some decisions about who is vulnerable and how to protect them:

the community don't know all the issues around the counter-terrorism threat at the moment so how can they make decisions through dialogue with us when it's our role to do that and they may not, perhaps, agree with us but somebody's got to make a call here to protect them.

ACC Karen's claim is contestable and contentious but is not out of step with the preceding discussions about the ambiguity of vulnerability and the role it can play in legitimating choices made by chief officers about the use of resources and power. Her comment also supports the argument put forward by Day and Klein (1987), that the increased complexity of the five public services they examined (including the police) coupled with a tendency to professionalisation<sup>20</sup>, particularly of senior management, makes challenging senior public servants and holding them to account difficult, due to the degree of expertise and specialised knowledge that is involved, or assumed to be required. The complexity of arguments about vulnerability may again be convenient in enabling chief officers to claim professional expertise and a privileged position from

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<sup>20</sup> Day and Klein (1987) recognised that it is arguable whether policing should be regarded as a profession and this debate continues, as Holdaway (2017) has recently illustrated.



which to assert their vision of vulnerability and effectively promote their own agendas. ACC Karen also alludes to the concept of dialogic legitimacy (Bottoms and Tankebe, 2012) but then effectively dismisses its utility in the context of discussions about vulnerability to terrorism because a reified ‘community’ apparently does not understand the threats. This again highlights possible tensions between a vulnerability discourse and policing by consent.

One example of a group not being considered vulnerable illustrates the difficulty in pinning down what was meant by protecting the vulnerable. In none of the interviews were victims, or potential victims, of road traffic collisions identified as being vulnerable. Yet, it is possible to make a convincing case that some road users are particularly vulnerable and that the use of police powers can protect them (World Health Organization, 2013). ACC Karen went so far as to make the (unsolicited) point that she did not consider these potential road casualty victims to be vulnerable.

so fixed penalty notices for not wearing a seat belt versus whether we put – put resources into that or do we put resources into whether we protect vulnerable people – if it’s that tight a call, then I would rather not put seatbelts because it is not as important to our public as protecting vulnerable people.

Yet, The World Health Organization (2013) identifies people who do not wear seat belts as vulnerable and advocates the use of police power as part of an effective approach to reduce fatalities and injuries. Wells (2016) documents a decline in roads policing, particularly since 2012. Similarly, freedom of information requests submitted by the Institute for Alcohol Studies indicate that roads policing officer numbers fell by 27 per cent between 2011/12 and 2015/16 and alcohol breath tests fell by 25 per cent (Buhagiar, 2017). Wells (2016) notes PCCs failure to prioritise roads policing, despite consistent survey evidence that at a local level there are ‘widespread concerns’ about anti-social driving, parking and excessive speed (Wells, 2016: 275, and Poulter and McKenna, 2007). These decisions are also made despite evidence that use of police power can reduce road deaths and serious injuries (Elliott and Broughton, 2005). Wells (2016: 275) posits that roads policing does not fit with a crime focussed narrative, such as that pushed by Theresa May (2010). I suggest that increasingly it is not so much a crime focused narrative as a vulnerability discourse, with vulnerability arguably being framed to fit the priorities of those giving direction to chief officers

(notably PCCs and Home Office ministers). Vulnerability may also be deployed by chief officers, using their debatable positions as professional experts, to promote their own priorities, as well as those of the politicians overseeing them (see Holdaway, 2017 for discussion of claims that policing is a profession). This vulnerability narrative has excluded some forms of crime, particularly acquisitive crimes, that had traditionally been prioritised by police (Pratt, 2017), an issue returned to later in this chapter. Another aspect of the narrative is a tendency to reduce decisions about policing choices to a simplistic and apolitical (and inaccurate) tale of ‘protecting goodies’ from ‘baddies’ (Turner, 2014: 17), a story that minimises the extent to which choices about how police power is used are (arguably inevitably) political and involve competing interests. The degree to which narratives about the priority being given to protecting the vulnerable are reflected in what police do was not tested by this research. However, chief officers are being influenced by a vulnerability discourse and it is present in their stories about the purpose of policing. It is also deployed to legitimate their decisions about the use of resources and power. Chief officers have always had to make choices but the dilemmas they face may have been heightened by austerity.

### **Rationing or prioritisation and tensions between vulnerability, other demands and consent**

Protecting the most vulnerable was raised by participants as a key purpose for policing and the claim was made that the proportionate use of power was justified in pursuit of this aim. However, there was some recognition of a tension between this agenda and issues raised by many people as matters that they wanted the police to prioritise, as CC Phil illustrated:

if you look at the public consultation exercise that XXXX [his PCC] carried out with the team, notwithstanding his attempts to convey to the public forums that he held that we necessarily had to think about risk and vulnerability, and the need to respond to things like child sexual exploitation and cyber-crime and so on and so forth, he got a number of pressures that were related to dog fouling and parking on footways. Now, no matter what might emerge from those consultation events on those terms, currently our organisational priority direction and so on and so forth is about vulnerability ... there is a disconnect

between what they regard as important, certainly in local areas, to what we are actually focussed on doing.

ACC Karen also noted this potential and linked it to an obvious display of police power:

if primarily our communities tell us we don't need to be armed but the threat is significant and there are growing numbers of firearms authorities needed, growing number of Taser deployments, then for us to be able to protect them, we may need to increase our firearms staff and our Taser staff. That might sometimes be in conflict with what the community want.

This again illustrates a potential tension between understandings located in protecting the vulnerable and justifications for the use of power based on public consent; which is the second broad understanding, that is discussed in chapter seven. A further factor to consider was the extent to which the notion of vulnerability was being used to rationalise or justify decisions about priorities, particularly in the context of cuts to public services, including the police.

Some of the responses implied that resourcing and prioritisation decisions are being inappropriately skewed by the focus on vulnerability. This could relate to perceptions that forces are failing to comply with Government priorities, such as terrorism, serious and organised crime, public order threats, civil emergencies and child sexual abuse, as set out in the Strategic Policing Requirement (Home Office, 2015: 7). CC Greg made the point in relation to the policing of sex offences and the potential for this to be disproportionate:

I don't want my resources tied up investigating, prosecuting, whatever because somebody clicked on an image by accident or whatever it was – we know what you are doing, stop it. So, it's a bit like – again, not to demean it in any way - but it is a bit like a speed awareness courses, instead of fines at court, you're not – it's not about fines and punishment, it's about changing behaviour. And so, it's really challenging to say: 'How do you go through this?' Those kind of discussions with people like HMI don't go down well. It is: 'How dare you write a letter to someone looking at paedophile images on the internet?'

It can be argued that Operation Midland, the investigation into, what transpired to be false, allegations about the behaviour of senior members of the establishment, including former Home Secretary Leon Brittan and retired Chief of the Defence Staff Lord Bramall (Grierson, 2017), also illustrates an unfortunate skewing of police decision making. This was probably partly due to an uncritical focus on vulnerability and particularly child sexual exploitation (CSE). Although it may also be an example of poor judgment and insufficient control of an investigation. The Strategic Policing Requirement (SPR) has CSE as one of its priorities and contrasts sharply with the requirements of the Policing Pledge set out by the last Labour Government, with the latter's focus on response times and neighbourhood policing (HMIC, 2009).

There is no comparable research from this earlier period, so it not possible to identify how chief officers viewed vulnerability previously or how this influenced their understandings of the right to exercise police power. Jefferson and Grimshaw (1984: 64) argued that changes in political and public emphasis and opinion should influence the choices made by police, or at least constrain such choices; this would include what to prioritise and resource, which in turn affects how police use their powers. However, in relation to vulnerability it is not easy to discern how most people feel police should prioritise the use of their powers; and participants in this research were also, perhaps understandably, unclear about people's priorities (how chief officers try to ascertain public wants is considered when discussing policing by consent in chapter seven). Yet, chief officers did appear to be listening to the concerns of, what Jefferson and Grimshaw (op. cit.) termed 'statutory authorities', particularly the Home Office and HMIC, in focusing on vulnerability; at least in what they said. This was illustrated by CC Trudy when she contrasted the current focus on vulnerability with the Policing Pledge; although she felt the new emphasis also mirrored changed operational demands on police. Further, CC Trudy suggested that the identification of vulnerability is part of a rationing process:

You remember the Pledge but it's if you're really, really upset, we'll – you know, it's all very subjective. So, I do think we've ended up probably down that end [focusing on vulnerability] more because of the growing number of those people in those categories and shrinking resource we have had available to do with it.

Other participants also saw austerity pushing police to focus on vulnerability, partly because of the reduction in other public services, which had previously dealt with some of these demands, echoing observations made by Charman (2017). Typical were comments from DCC James:

there is clearly evidence in these austere times of what could be described as ‘cost-shifting’, where functions that one organisation doesn’t want to deal with, or can’t deal with, are moved across ... we seem to deal with an awful lot of people who are in some moment of crisis and it generally falls to us. The pressures on the NHS in XXXX [the force area] are acute – ambulances are not available, even to a murder [referring to a recent local incident].

The impact of reductions in police service budgets should also not be under-estimated, as noted in chapter five central Government funding of police fell by 20 per cent between 2011 and 2015 (HMIC, 2015a) and numbers of officers fell to their lowest since 1985 (Weinfass, 2017). Forces also start from different points, partly because of the funding formula but also due to significant differences in the choices made over years by police authorities, and latterly PCCs, about the level of local precept levied to supplement central funding. Hence, the impact of austerity on police is not uniform across England and Wales (HMIC, 2017). This may explain some of the variation in responses from participants. However, participants did suggest that austerity was pushing police to focus more on vulnerability and less on issues such as volume crime, as CC Simon noted:

the context of policing over the last five years has been austerity, less money, fewer people and the changing nature of demand. So, whilst your traditional volume crimes are still there and, you know, can exercise and challenge us, actually the big change has been around things like public protection and safeguarding. It’s all about risk, threat, harm and vulnerability. It’s now, very much, in terms of demand that we deal with.

It is to these demands that I now turn.

### **Dark and Hidden Streets - The Knockturn Alley<sup>21</sup> conundrum?**

It was not clear what participants meant by 'vulnerable'. However, illustrations of perceived vulnerability did emerge during the interviews. Nine participants discussed vulnerability in terms of sexual exploitation, eight did so in the context of people made vulnerable through mental health issues, including those with drugs and alcohol problems and six considered cyber-crime and its potential to exploit the most vulnerable. Terrorism was also raised by six participants but who was deemed particularly vulnerable to this threat was not apparent. Given the indiscriminate nature of much contemporary terrorism it could be argued that anyone who frequents a crowded place is vulnerable. The examples raised by participants overlap with those The College of Policing (2016) outlined (although the advice from The College post-dates the fieldwork for this thesis), which included victims of child abuse, sexual exploitation, domestic abuse, genital mutilation, slavery and prostitution. The College guidance also has a catch all, 'those with whom police come into contact in a wider context, for example ensuring that care and welfare of those detained in custody and dealing with individuals who suffer from mental ill-health' (ibid.)

The challenges police face in dealing with mental health and dependency issues are not new but may have been exacerbated by recent reductions in health and social care services, as noted by CC Simon:

a lot of it is around concerns for safety and welfare, especially people who are vulnerable, who are missing from home, who have got dependency issues – drugs and alcohol, who are self-harming, who are suicidal – all of those things. A massive, big demand on the service and on our partner agencies around concerns for safety and welfare.

Some other categories of an emerging vulnerability discourse are also not new but seem to have a raised priority for chief officers. Terrorism has been a persistent challenge for policing, although the nature of the threat has altered. Police have always dealt with the disadvantaged and vulnerable, both as victims and offenders. Yet, as noted earlier, the protection of the most vulnerable as a key policing purpose did not feature as a significant theme in earlier research into chief officers (Reiner, 1991; Savage, Charman

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<sup>21</sup> The dangerous and magical alley in J.K. Rowling's Harry Potter novels.

and Cope, 2000; Loader and Mulcahy, 2001 and 2001(a); and Cales, 2011, although it did surface in Roycroft's 2016 study).

Also interesting were categories of vulnerability that were not raised by participants, including (as noted earlier) vulnerable road users (World Health Organisation, 2013). Similarly, victims of crimes which used to be very high on police agendas, such as burglary, robbery and vehicle crime, were not raised in the context of vulnerability. This supports Pratt's (2017) contention that there has been a move away from traditional police and criminal justice concerns (he gives burglary and vehicle crime as examples) across 'advanced liberal democracies' (ibid. 1322). He argues that the state has distanced itself from broad duties to protect the public. Instead legitimacy is developed through a 'limited liability' (op. cit.) approach that prioritises protecting people from risks that the state decides citizens cannot manage, with individuals being held responsible for protecting themselves from other risks. Sexual exploitation and terrorism feature strongly in the risks that Pratt argues a 'limited liability' state assumes responsibility for. Potentially negative consequence arising from this development may include increased harm in areas of risks that the state now pays little attention to and the growth of policing and penal measures and power, which prioritise public protection over individual liberty and human rights. CC Greg's proposal that, 'if I can raise [X] million pounds ... I would spend it on more guns, more public protection and more digital,' can be construed as an example of this trend. It also points to perceived new or altered threats that may lead chief officers to make different choices about priorities and about how police power should be used.

Cyber-crime is a relatively new phenomenon and was addressed by ACC Karen, 'cyber-crime, for example, we know is having a huge impact on our communities – they are hidden streets. It is absolutely proper that we start looking at those hidden streets in terms of policing and make sure that we are keeping people safe, especially vulnerable people, on line.' DCC James made a similar point, 'we need to police the dark streets of the internet because that is where some of the threats are, not in the dark streets of XXXX [his Force area] – they are relatively safe. That's a difficult thing to sell but that is the truth'. DCC James raises the potentially delegitimising impact of not convincing people that these new or altered threats justify the attention that participants claimed is being paid to them by police. It is revealing that his proposed answer to this conundrum was

to try and sell the vulnerability agenda more effectively, rather than reflecting on whether it is the appropriate priority for the use of police resources and power.

CC Tom illustrated how the focus on vulnerability contrasts with previous national policing priorities, ‘some of those things that were ignored before in the “reds and greens” have become national scandals. You know, child sexual exploitation. That was – did you ever go to Police Authority and talk about that? Your performance on it?’ In his rhetorical question CC Tom highlights a change in focus for both chief police officers and for those holding them to account and providing political direction. Further, his comment about ‘national scandals’ suggests that the focus on supposed new vulnerabilities is related to the delegitimizing impact of past (and potentially continuing) failures to effectively address these issues.

The observations from CC Tom, CC Greg, ACC Karen and DCC James point to a tension with traditional notions of policing by consent which, in part, rest on police taking account of views held by broad swathes of the public (Jefferson and Grimshaw, 1984: 67). In a wider context a failure by the powerful to understand and act on the needs and wants of those over whom power is exercised jeopardises legitimacy (Beetham, 1991). The dark and hidden nature of these mooted new, or altered, policing challenges may make it difficult to obtain people’s implicit or explicit agreement to prioritise the use of police resources and power to address them. Indeed, many may not see these concealed issues as their priorities, as their impact on most people’s day-to-day lives may be minimal. However, it is likely that most people would agree that child sexual exploitation is appalling, and it is possible that it is the emotional content of an appeal to protect the most vulnerable that renders it particularly useful as a legitimating narrative. Conversely, Wells (2016: 278) suggests the absence of a ‘convenient folk devil’ partially explains the decline of roads policing; it may also help explain the choices being made under the veneer of a vulnerability agenda. Despite this, locally pressing and visible ‘quality of life issues’, such as, disorderly behaviour and inconsiderate use of motor vehicles, may still have greater immediacy and priority for many people when it comes to the allocation of police resources and use of police power (Wells, 2018: 104). This could lead to tension between demands from the ‘democratic audiences’ [the wider public] and ‘legal audiences’ [the law, Home Secretary and police authorities – now PCCs] proposed by Jefferson and Grimshaw (1984). This poses a



conundrum; how can police justify their use of power in Knockturn Alley if people do not recognise the devils that allegedly lurk in its dingy corners?

### **Threat, harm and risk**

Many participants suggested that threat, harm and risk assessments were a suitable mechanism for identifying vulnerabilities. Variations of such assessments were employed in policing before 2008 but their use had been limited (mainly to conflict management, non-operational health and safety procedures and to some civil contingencies planning) and links between such assessments and a vulnerability discourse were not apparent. Significant impetus for the increased use of threat, harm and risk assessments was provided by *The Review of Policing, Final Report*, commissioned by the Home Secretary and published in 2008 (Flannagan, 2008). This report talked about the growth in complexity of policing and touched on crimes such as sex offending and terrorism, which now fit within areas where the language of vulnerability is commonly used. However, what is striking is the absence of an obvious discourse of vulnerability, rather Sir Ronnie Flannagan<sup>22</sup> called for a flexible and considered response to protect the public, utilising the concepts of threat, harm and risk. He also emphasised the importance of neighbourhood policing, partnership and the need for public debate about policing priorities. Underpinning the report were concerns about using police resources effectively and about police legitimacy.

There appears to have been a marked change between 2008 and 2016. Most participants in this research associated threat, harm and risk assessments to making decisions about how to identify and respond to vulnerability. To an extent these decisions were influenced by national assessments, such as those conducted by the National Crime Agency, but also by priorities set locally, notably by police and crime commissioners. CC Greg's explanation was representative of accounts from nine chief officers:

I have the Police and Crime Commissioner who sets the Police and Crime Plan to which I must have due regard and I do have due regard. Underpinning that, I have an operational delivery plan that belongs to me and says to the Force these

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<sup>22</sup> Sir Ronnie Flannagan had recently retired as Her Majesty's Chief Inspector of Constabulary (HMCIC) and prior to being HMCIC had been Chief Constable of the Royal Ulster Constabulary, now known as the Police Service of Northern Ireland (PSNI).

are what our priorities are. Of course, not only is that informed by the Commissioner's piece saying this is what my public priorities are, it is also informed by national bits of work saying this is what we think is important for XXXX [Force] but also local threat assessments with us as well.

The threat, harm and risk paradigm is not only relevant to strategic decision making. Assessments utilising the National Decision Model (College of Policing, 2014) or THRIVE approach (HMIC, 2015a and Appendix E) are also used from day to day when dealing with specific incidents and individuals; as ACC Karen noted, 'if you're in an operational role, then your decision-making is based on threat and risk.'

In an e-mail dated 3<sup>rd</sup> January 2017 ACC Bill responded to a summary of emerging findings circulated to all participants, concerned that it should be made clear that, in his view, the threat, harm and risk model provided a rational approach to decision making:

the 'threat harm and risk' approach should be directly linked to identified community, PCC and force priorities, whether they are the correct priorities is another issue. I therefore struggle to see how THR could skew priorities, which was most certainly the case in a performance/quantitative driven approach.

Although in his interview ACC Bill recognised that such assessments could be subjective, 'even chiefs' views of what a threat is are very, very different.' CC Simon also thought that properly applied such assessments could improve decisions about how to use police power and linked this to legitimacy:

if we get our staff to be very focussed on, and very aware of, risk, threat, harm and vulnerability and ask them to do the right thing, whatever that might be – so if we entrust them and empower them with obvious, sort of, safeguards and checks and balances in, so that they can exercise some discretion and some professional judgement, I think they will more and more act with legitimacy.

As CC Simon suggests, professional judgment, which is arguably subjective, was also considered to be important. The extent to which this implied a perceived privileged perspective for police, and particularly for chief officers, was not clear, as CC Phil's comment illustrates:

Strategic assessments and information intelligence that we have got. A fair degree of professional judgement based on what I know to be emerging

pressures and where I think that the greatest risks are that are being presented to our communities, directly or indirectly, public feedback that we have already discussed but there is a need to take a, sort of, professional view, if you like, on that feedback because – this is the risk, isn't it?

Assessments of threat, harm and risk and consequent decisions about who is vulnerable and should be protected and where police activity should be prioritised, have direct consequences for how, and over whom, police power is exercised. As CC Simon's comment suggests, 'I want them to look at risk, threat, harm, vulnerability, do the right thing and if they need to deploy, deploy.'

However, the issue of who is being protected was not always clear and was contested. Indeed, some participants suggested that these assessments related to the personal risk and vulnerability of the decision maker, as well as to risks to citizens, as argued by CC Trudy:

So, you know, that thing of you have contact with somebody who has got mental illness and then they turn up dead in the next – so organisationally, we are much more risk averse, because of that.

CC Alan made a similar point:

all day, police officers are balancing risk ... and they are making judgements. Where it becomes almost a – where you create a sense of helplessness with an organisation is when it starts to be 'what is the risk to me?' Professionally or in career terms. That's when we have a dangerous risk aversion.

CC Trudy illustrated the anxieties that this might induce in chief officers, 'some of the threat, risk and harm agenda, whilst I am not saying it is not right – some of it is certainly driven by accountability fears. Risk – threat – to you as an individual.' The personal risk and precariousness perceived by chief officers is returned to in chapter eight, when discussing understandings of the right to exercise power related to the law and associated checks and balances. CC Rachel noted that the threat, harm and risk model was also being applied to protect the organisation and reflected both past failures that undermined legitimacy and new facets of policing:

I think we use the language a lot more now, partly because we have identified how much of our workload it is generating. Also, the organisational risks from all the occasions when we have got it wrong.

Seven participants claimed that the current threat, harm and risk mantra could cause perverse outcomes and was potentially divisive and ambiguous and suggested it fuelled an unhealthy aversion to risk. CC Alan noted the risk of unintended outcomes flowing from the approach:

Threat, harm and risk really emerged in Flanagan – the Flanagan Review didn't it – his report as terminology, in terms of how do chief police officers allocate – reduce risks, deal with threat, protect from harm. So, as principles, they are quite sound – as principles. However, they are guiding principles, they are not answers to a question and there is a real danger, I think, of those perversely being used to dismiss other things that don't fit into that – that's not high risk, therefore ... and you can see that sometimes, that's very dangerous to use those as an absolute template. They are guiding principles.

DCC Anthony was even more forthright:

I don't think it means anything really. Or, if it does, I don't think there is an accepted – I think it's – I think it's become trite and if you asked me, or anyone, to define what is the difference between threat and risk, then I'd faff around with some words that might or might not make sense but, you know, I haven't got it really off the cuff. There it is – I understand why we use threat and risk. I kind of – there's a kind of broad think – feely – thing about it but I couldn't really articulate that in any meaningful way. Harm, I can – kind of, can, particularly in that context where it is about potential for harm, but I think it's – I think it's a really difficult phrase. I think it is difficult in a couple of ways. First of all, if there is no accepted understanding – I'm sure there's a written definition somewhere of it but there is no accepted understanding, but it is something that is always used – that's, kind of, woolly. The second thing is, it has a tendency to – to – certainly one of the things I think we are seeing here, is things are either categorised in relation to threat, harm and risk, or they are not important. And either you have got to have a really shared understanding of what you mean by threat and risk or it's a divisive and unhelpful tool.

CC Greg was interesting, in that he did not use the terms threat, harm or risk until he was directly asked about it in a follow up question:

We tried very hard not to talk about threat, risk and harm, exactly for the reason you said – we're not quite sure what it means. We're not quite sure – it doesn't work with the public. I try to talk about 'need'.

CC John gave an example of the possibly perverse and risk averse culture that he thought the vulnerability agenda and threat, harm and risk assessments was driving at lower levels in the organisation, in this case for custody officers. He also suggested that chief officers, and those holding them to account, were complicit in this development:

I went to custody last Tuesday lunch time and I had three people asleep in the cells and I had a PC with a door open sat in front of each of them. Three PCs doing one-to-ones. They'd been arrested the night before - two for self-harming, one for mental health issues. They were on 24-hour watch with a PC. When I asked why, they said: 'Oh because they had mental health issues and self-harm'. Yeah, but surely one officer could watch three of them. 'Not prepared to take that risk boss'. So, what have we come to? ... we have driven a culture, haven't we, of risk aversion. ... until we get media and political and inspectorate support to do things differently, we will continue to get the things we have always got.

CC John's reference to media, political and inspectorate support, or lack of support, might be viewed as an indicator of the pressures that are driving the vulnerability agenda and a warning about the potentially unintended consequences that could flow from it.

## **Conclusion**

A view broadly held by chief police officers, that police have a duty to protect the public, can be seen in previous research into this elite and is present in a range of historical assertions about the purpose of policing. All participants in this research drew on a requirement for police to protect the public as a justification for the right of police to exercise power, but they emphasised a duty to protect the most vulnerable. However, the nature of vulnerability and the mechanism for making decisions about who to protect and how to use power to do so was contested; particularly in relation to the efficacy of threat, harm and risk assessments.

The focus on protecting the most vulnerable is a relatively recent development, which was barely present in the influential *Review of Policing* in 2008 (Flannagan), nor was it identified in research into chief officers before 2016. These new narratives about policing purpose and justifications for the use of power appear to reflect a wider societal discourse about vulnerability. It is also a response to a perceived need for a revised prioritisation and rationing system, to reflect changes in demands on police, which are arguably exacerbated by austerity.

Anxieties held by chief officers about police legitimacy, at the heart of which lies the use of power, and the dilemmas of managing competing demands, seem to underlie many of the stories told by chief officers about using power to protect the vulnerable. A discourse of vulnerability is deployed to legitimate the choices chief officers make about what to prioritise and how to use power and may be used in the same way by individuals and bodies that both hold the police to account and give them political direction, notably police and crime commissioners and the Home Office. The ambiguity of the concept of vulnerability, confusion about what it means, and its emotional content, may be construed as convenient when constructing legitimating narratives.

Tensions and conflicts between understandings based on a duty to protect people, particularly the most vulnerable and justifications for the use of police power rooted in the concept of policing by consent were apparent and raised by some participants. However, all participants, directly or indirectly, made links between protecting the public and understandings of the right to exercise power based on policing by consent and it is the latter understandings that are addressed in the next chapter.

## **Chapter Seven**

### **Consent: myths and ‘mind forg’d manacles’ (Blake, 1794)?**

#### **Introduction**

This chapter interrogates chief officers’ ‘taken- for- granted- convention’ (Harre and Bhaskar, 2001: 28) that there is consensual policing and that this gives police the right to exercise power; a convention that Murray and Harkin (2017) contend should be challenged. To frame this discussion the meaning of policing by consent, initially addressed in chapter three, is explored, then participants’ accounts of policing by consent are critically assessed, including explanations of attempts to gauge if consent is more than ‘dull compulsion’ (Carrabine, 2004: 180). The role that hazy and confused stories of consensual policing play in constructing a convenient legitimating narrative are considered, as is the tension and potential conflict between a discourse of consent and the inevitability of coercion in policing. Insights are sought through tales of withdrawn consent, including an apparent construction of a relatively consensual ‘now’, contrasted with a more coercive, ‘then’. Attention is drawn to recurring themes that influence participants’ understandings of the right to exercise power, including their anxieties about legitimacy and managing competing demands.

#### **What is policing by consent?**

In chapter three the persistence of a discourse of policing by consent amongst chief officers was identified. Consent was a key element of the majority ‘broad view’ of policing identified by Reiner (1991: 110). His cohort of chiefs was exercised by the need to balance enforcement with social cohesion, a key theme in the Scarman Inquiry (1981). The development of community policing was also linked to the need to build consent (Alderson 1979, 1984). Savage, Charman and Cope (2000) found that consensual policing continued as a legitimating narrative for chief officers, although Reiner (2010: 256) suggests this was partly undermined by short-term enforcement initiatives under the New Labour Government. Loader and Mulcahy (2000) interpreted the development of a more considered and coherent senior police voice as, in part, a continuing construction of consent. More recently Caless (2011) found that

chief officers still emphasised policing by consent, but the Home Office, HMIC and chief officers were concerned that there was a growing gap between public expectations and police delivery that threatened public confidence and consent (HMIC, 2005). Anxieties about this gap led to a reinvigoration of community policing in the form of neighbourhood policing (Fisher, 2012), arguably a more prescriptive version of earlier iterations of community policing, or old wine in new bottles. The Independent Police Commission (2013) developed the narrative of consent with a proposal for New Peelian Principles. Roycroft (2016) noted the continued use of a discourse of consent by chief officers. Consent remains embedded within police rhetoric in England and Wales, as illustrated by the *Policing Vision 2025* (APCC, 2016: 4), produced by the National Police Chiefs' Council (NPCC) and Association of Police and Crime Commissioners' (APCC):

1.3 ... Respect for human rights will be central to everything we do, as is the commitment to policing by consent.

The assumption that the public, or publics, broadly consent to the exercise of police power has been challenged. Emsley (2014: 17) highlights a problem with the concept, in that it is founded on the dubious assumption 'that British society was based in consensus'. How narratives of consent alter to accommodate changes, such as a more questioning society (Giddens, 1994) and declines in trust in more diverse societies (Cook, 2011) is unclear. Similarly, how policing by consent adapts to contemporary challenges, including austerity, new governance mechanisms, altered demands, crises and continuing scandals is not obvious.

Policing by consent is arguably ill-defined. Earlier influential chief officers (Mark, 1977; Alderson, 1984; and Oliver, 1987), did not envisage policing by consent as the explicit agreement of people to specific powers being exercised over them. Rather they perceived a police duty to take account of the many views held by members of the public, coupled with a commitment to use coercive power sparingly, with a (reified) public or community responding by broadly accepting the exercise of police power. However, Reiner (1991: 108) found that the views of some of his cohort had developed and he cited one chief constable, 'policing by consent is no longer enough. It has got to be policing by co-operation, a partnership' (Reiner, 1991: 109). This infers consent expanding to embrace securing public mandates, and sometimes active support, for



specific police activities and objectives. Manning (2014: 31) highlights the difficulty of police negotiating a mandate ‘between the several publics they serve, not a reified “public” ... The mandate in a democracy is fraught with contradictions because of the various expectations of police’. Earlier, Jefferson and Grimshaw (1984: 68) identified that police had started using public relations to ‘construct a broad, non-partisan “consensual” public constituency’, although they were concerned that the views of ‘the policed’ were often dismissed by chief constables as partisan (ibid. 67). Yet, Jefferson and Grimshaw did not dismiss policing by consent as a ‘mere myth’ (op. cit.). Indeed, they found its ‘origins in the notion of communal responsibility for law enforcement’ and noted that it had practical consequences and ‘explains the genuine resistance on the part of chief officers to the idea of guns, tear gas, water cannon and the like’ (op. cit.).

What the chief constables of the 1980s would make of officers routinely patrolling in body armour, carrying CS or PAVA cannisters<sup>23</sup>, extendable batons and, in many cases, Tasers<sup>24</sup>, is not clear. Yet the right of police to exercise power was explained by all participants in research for this thesis, at least in part, with reference to policing by consent. Five participants directly referenced Peelian Principles as a corner stone of consent. Theresa May (when Home Secretary) also stressed the need for policing by consent and linked it to ‘Robert Peel’s 9 Principles of Policing’ (Home Office, 2012a), despite Lentz and Chaires (2007) and Emsley (2014) demonstrating that Peelian Principles were a mid-twentieth century invention. So, the foundation myths of modern policing in England and Wales remain influential and it is participants’ accounts about these that are turned to next.

### **Peel persists**

Policing by consent was called on by all participants to explain the right of police to use power. Representative examples of the responses are shown below and demonstrate that, when discussing consensual policing, participants emphasised minimising coercion, the rule of law, operating within a set of values broadly shared

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<sup>23</sup> PAVA is a synthetic pepper incapacitant. The CS and PAVA cannisters used by police in the UK project incapacitant in a liquid stream.

<sup>24</sup> Taser is the brand name of the conducted energy devices (CEDs), sometimes referred to as electronic control weapons (ECWs), used by police forces in the UK.

by those over whom power was exercised, and the role of symbolism and trust in building consent.

Minimising the use of coercion was a common thread, as shown by CC Alan who also stressed links to ‘the community’<sup>25</sup>, although the absence of a comment about the different publics being served highlights one of the difficulties with the concept of consent:

[policing by consent] means that the police are of the community, the public understand why they are there and accept their authority ... the police are part of the community, not an occupation army.

ACC Chris stressed, ‘Peelian principles and that notion of policing by consent and not coercion’. CC Paul also related consent to low levels of coercion, because, ‘if society decided it didn’t want to be policed, it wouldn’t be policed.’ These views on minimal use of coercion were, explicitly or implicitly, voiced by all participants and appeared to be more than a pragmatic choice based on consent being more effective than coercion. As discussed in chapter five, participants consistently expressed liberal leanings, probably influenced by their social and educational backgrounds. Although, how these apparently normative values translate into operational policing is not tested by this research. Whilst a wish to minimise coercion is not necessarily incompatible with the key role that police play in maintaining order (Reiner, 2010: 141-173), there is a tension, given the role that coercion (including the use of force, or threat of it) plays in maintaining order (Bittner, 1974 and Brodeur, 2007). Recently, Van Dijk, Hoogenwonig and Punch (2015) proposed that there was a false dichotomy of two competing paradigms of policing, of ‘consent’ and ‘control’ and that the consent paradigm was threatened by the practice of policing, which inevitably involves a significant element of control.

Five participants did, to an extent, recognise and confront the conflict between coercion and consent in arguments that reflected Hobbes (1968 [1651]) in maintaining that the police have the right to exercise power to maintain order and protect the public, potentially from themselves. This was irrespective of an absence of consent, at least from a proportion of those over whom power is being directly exercised and potentially

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<sup>25</sup> ‘Community’ is also difficult to define and describe and is arguably a slippery concept, with Bell and Newby (1971: 21 – 53) identifying at least ninety definitions.

from wider groups empathising with them. This was most explicitly put by CC John: ‘without some element of force and control, then you end up with anarchy’. CC Alan made a similar point:

I often feel that the role of the police, particularly in a really nasty or messy incident – the ones you want the police to be at – you know, something terrible has happened and the police usually come into that chaos and they bring order out of chaos. And then work out what has happened and then take the necessary action. And that can be in anything from a road collision to a neighbour dispute to a huge train crash. But that’s what we effectively do.

These apparently Hobbesian justifications did, partly, confront the coercive facets of police power. However, this was not a prevalent thread in the understandings of the right of police to exercise power that emerged from the data, which tended to favour more benign and ambiguous notions of protecting the vulnerable and consensual policing.

ACC Karen inferred that policing by consent is connected to using power within the law, the first of Beetham’s (1991: 15-16) three dimensions of legitimacy. Her comments (below) also reflect Beetham’s (ibid.) second dimension, a link between the dominant and the subordinate, particularly in relation to shared experience and values:

Peelian Principles are as relevant today as what it was when we started out in terms of policing. And I agree with that to a certain extent in that we are absolutely impartial, absolutely here to enforce the law and I love that saying that we often rely on around ‘the public are the police and the police are the public’. I think that’s exactly what policing is for me.

CC Alan also connected consensual policing with the rule of law, again demonstrating that the broad understandings of the right to exercise power held by chief officers are related. However, he inferred that police must not only act within the law, they should do so within parameters accepted by the public. His comment on the police as professional citizen also alludes to the importance of shared experiences and values in building consent:

I am very much a believer of the professional citizen, if you like, function but it is based on rule of law and based on consent. Not for everything we do, as I said before, but on that consent for us to do on their behalf, believing that we have

that authority on their behalf. So, you know, the power comes from the public and their consent.

DCC Susan discussed consent in terms of behaviours that indicated its presence, and her observations reflect the third of Beetham's (1991: 15-16) dimensions of legitimacy, namely evidence of the consent of the subordinate to the exercise of power. She also noted the importance of tradition and trust, invoking the symbolic role of police in demonstrating the State's commitment to protecting people (Manning, 2014: 26). However, she was anxious about the fragility of consent:

If I cordon off some of these chairs, when you go in the room, nobody would go in them, or across a door – nobody would go in. And it is not because it's a great big barrier – you know, it is only a bit of plastic ... But actually, you trust that it's got 'Police' on it, we are making the decision to do something for your best interest ... and therefore you allow something to happen to you as a result ... and I think the trust is very hard won over lots of years and also rooted in tradition and it is very easily lost.

CC Tom also looked-for evidence of consent in people's interaction with and trust in police, reflecting participants' awareness of procedural justice theory (Sunshine and Tyler, 2003), which is returned to later in this chapter and in chapter nine. Additionally, he related consent and legitimacy to law and to a democratic mandate, a subject discussed in chapter eight. He concluded by referencing Peel, again highlighting the symbolic role of the myth:

the most important thing, bar none, is the relationship we have with the public. Do they trust us? Will they call for help when they need us? ... does legitimacy come from what we do or how we do it? And in my opinion, it is the latter. Legitimacy comes from our relationship with the public. They – We are there on their behalf and we are accountable to them ... We have mechanisms by which we achieve that. They are a Parliament that passes legislation. They are the tripartite structure, for better or worse of the Home Office, the PCC and the Chief Constable but ultimately, they are all mechanisms for dealing with the public will. I don't think the public necessarily see it that way but that's the principle of modern policing that is laid out by Peel.

CC Trudy also emphasised the importance of trust in building consent and, like DCC Susan, was conscious that trust could crumble:

you have to be worthy of the trust of communities because if you are not, that's where it all starts to unravel. Because they are trusting us to have coercive powers and invasive powers and do things and they are doing that because generally they think we are doing it to look after them.

These accounts of policing by consent have common features particularly, minimal coercion, values shared with wider society, rule of law, trust and the symbolic role of police and appeals to Peelian myths. However, there are complexities and ambiguities, which are examined next.

### **Hazy consent**

Whilst Peelian principles were widely called on and all participants used policing by consent to justify the right to exercise power, they were less clear about what they meant by Peelian principles or consensual policing, beyond broad observations about minimal coercion, acting within the law, shared values and trust. As CC Phil said, 'where it becomes difficult is the determination of what is consent and also if – if you – what are they consenting to?' CC Tom remarked that, 'it's really difficult to measure and describe it'. CC Rachel expanded on this:

We talk about it [policing by consent] a lot and I think – and I talk about it a lot. What we really mean – we are probably pretty hazy about that. I suppose in part I would link it to being a largely unarmed police service and I gather we are one of only four in the world that is. And, although clearly since you and I joined, our officers are equipped with much more ... [officers] still spend the vast majority of their time going around their business without having to use force ... policing by consent is more than that – it means that when something bad happens people do ring us or contact us and want us to know stuff. They do trust us to act, I suppose, in the public interest. They do trust us to protect – it sounds quite grandiose, but I guess there are police services in the world where you don't call them if you can possibly avoid it.

CC Rachel's comments can be read as a recognition that policing by consent is difficult to describe, and she reflects other participants in picking up themes of minimal coercion and trust. She also infers that there is something particular to England and Wales in the notion of policing by consent. There are echoes of the rose-tinted and nationalistic interpretation of British Police history presented by Reith (1943, 1956), that Emsley (2014) argues played a significant role in developing a myth about policing by consent. CC Rachel also recognises that reliance on the symbolism of unarmed police becomes tenuous as police in England and Wales appear more militarised, a tendency that Brewer et. al. (1996) identified as gathering pace during the turbulence of the 1980s.

CC Simon was even more explicit in narrating a tale of consensual policing which resonates with Reith's (1943, 1956) version, although evidence to support CC Simon's assertions about the quality of British policing were absent:

I would just go back to your Peelian Principles ... I think these principles were as sound today as they were then. You hear a number of people say this, that the British Police service is the best in the world. I absolutely think it is.

Peelian principles and policing by consent were symbolically important to participants but the meaning behind the myth was hazy. However, they were asked to expand on how they developed consensual policing and these accounts are examined next.

### **Conversations and accountability**

Participants commonly emphasised the importance of accountability and of conversations with people, to understand what they wanted of police, to build trust and bolster consent. The difficulties encountered in this engagement and its efficacy will be turned to but first the claims are set out. CC Rachel's comments are representative of the emphasis put on accountability and explanation:

[the public] deserve to know the police are on their side ... How do you do that? Well, you have got to have accountability, transparency – you've, kind of, got to get to know each other again.

CC Gregg stressed the importance of being open, particularly when things had gone wrong:

retaining the reassurance of the public, sometimes referred to as the ‘consent’ behind policing. And to me in that, transparency is absolutely key. And it is not transparency around the things that we do well, it’s about the things that we do badly.

CC Tom was succinct, ‘if we don’t talk to the public, the public won’t talk to us and therefore we won’t have a proper – you know, constructive relationship with them.’ ACC Karen underlined the need to hold conversations with a range of people to provide parameters within which police should use power and she felt that a more representative police work force might improve these conversations:

We will always have difference and difference in how we apply the law and that’s a healthy community and healthy society in how we debate that. I think if – and the only way we can ask about those things is by inviting the community in to policing much more and for having a diverse – diverse representation in policing ... the rights to exercise power, is that we have to constantly walk a fine line between when that’s the right thing to do and when our community feels it’s over-powering or when there’s a perception that it is targeting a certain community ... If we haven’t done the right thing, that we have a dialogue and are transparent and that we consider our practices and the impact that it has.

CC Alan’s account (below) has echoes of Jefferson and Grimshaw’s (1984: 64) notion of police chiefs listening to ‘democratic audiences’ (the policed), the ‘statutory’ audience of the law, Home Office and police authorities/PCCs but also, an audience of police ‘occupational opinion’.

I will go to local councils and deal with any question or scrutiny from them. So that they can reflect from their different areas, issues back to me. But I will also visit police stations and go walkabout and get a feel myself [a reference to going on patrol and meeting the public and meeting staff on station visits and on patrol].

Along with accountability and transparency all participants felt that dialogue was crucial in building public consent to the exercise of power, reflecting Bottoms' and Tankabe's (2012)<sup>26</sup> account of dialogic legitimacy.

### **Building consent: neighbourhood/community policing**

How dialogue is developed was described in a variety of ways, but fourteen participants emphasised the role of community or neighbourhood policing in these conversations. CC Alan's view was typical:

It's more about that embedding of neighbourhood policing into those areas so that – so that, actually, we can understand the community and then reflect those concerns ... I mean there are different communities, whether they are geographical, linguistic, ethnic – there are many different communities which are always changing ... our PCs and PCSOs in those communities – you get a feel from them.

CC Simon's stress on Peel and the importance of neighbourhood policing would not have been out of place amongst the chiefs interviewed by Reiner (1991):

it [policing by consent] goes back to Peelian principles – it goes back to, you know, what is the style or philosophy of policing within this country – you know, for me, I absolutely believe and always have done that neighbourhood policing is the jewel in the crown ... It is about connectivity.

Participants claims that neighbourhood officers play an important practical and symbolic role, in engaging with the public and constructing consent reflects the findings of the Independent Police Commission (2013). Yet, erosions in neighbourhood policing have been identified by HMIC (2017) and were underway as field work for this thesis was being done; a recent example of this trend being the decision to remove all police community support officers (PCSOs) in Norfolk (Dodd, 2017). The decline of neighbourhood policing relates not only to numbers of staff allocated to the task but also to what they do and Higgins (2018) found that there has been a shift from a focus on

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<sup>26</sup> Several of the participants would have heard Professor Bottoms discuss dialogic legitimacy whilst studying for the Diploma in Applied Criminology and Policing at the University of Cambridge, offered for several years as an element of the Strategic Command Course.



locality, engagement and problem solving, towards response policing and managing individuals. This change can be linked to the priority apparently being given to vulnerability.

The decline in neighbourhood policing capacity poses a challenge to the rhetoric of policing by consent. In part this could be explained as a response to declining budgets, but it is also a choice made by chief officers and PCCs. Further, as shown in the previous chapter, the semi-visible and ambiguous task of protecting the vulnerable (arguably a conveniently ill-defined group, or groups) seems to be increasingly prioritised over more traditional and visible policing activities, and the accounts provided by participants indicate that this is the case, although this research did not establish how the emphasis on vulnerability was reflected in operational activity. These potential reductions are not confined to neighbourhood policing, they extend to other visible functions, such as public order policing (Lister and Rowe, 2015) and roads policing (Wells, 2016 and Buhagiar, 2017). These functions not only deliver a service, they are also symbolically important in dramatising the commitment of the state to maintaining order (Walker, 1996: 68 and Wells, 2016). This again illustrates a tension between justifications of the right to exercise police power based on a duty to protect people, particularly the most vulnerable, and understandings rooted in consensual policing.

### **Checking the temperature of consent: imperfect and subjective thermometers?**

All participants maintained that effective conversations, communication and consultation was a broad process that was not confined to local officers. This section outlines and assesses the accounts provided by participants about the methods used. There was a broad recognition that judgments about levels of consent and people's requirements of police were (probably necessarily) subjective. As DCC Anthony observed:

the only real way you get a sense of that is through your engagement. Both your personal engagement but it's naïve and probably a bit arrogant to think that the personal engagement gives you the touchstone that you can tell everything by. Through the quality of engagement that happens through your bit of business ... and what cumulatively that tells you about the mood, if you like. It's a very

imperfect way of doing it because it is a very – it's not quite a subjective – well it is a subjective judgement.

ACC Bill described how he judged whether consent was being given, his approach, in part, relied on mediated indicators of consent and concern:

[consent to] the use of power ... you're testing the water, listening constantly to the mood music, you read the papers every day, listen to the radio – we get that environmental feedback on a – on a regular basis. The key bit at the moment is are you actually tackling the issues they want you to tackle.

ACC Chris emphasised independent scrutiny in conjunction with engagement as an aid to judging if consent was being given to the use of power:

we've got an ethics committee that independently scrutinise our stop-searches that we catch on body-worn video, we've got a ride-along scheme, we've got open doors. I think all that is about seeking to build our relationship with the public, so they are confident about what they do and trust that we can do it on their behalf.

Two participants suggested that independent advisory groups (IAGs) helped gauge consent and judge whether the use of police power was proportionate and legitimate. DCC James noted his IAG's role in reviewing police use of force:

[reported quote from the Chair of his IAG] 'You are the State and I need to ensure that you exercise all these vast range of powers that you have in a fair and proportionate way and that vulnerable people are treated fairly.'

Similarly, 'Gold' groups supporting the management of major events, involving senior police officers but also members of partner agencies and sometimes other advisers, are reportedly used to check on the proportionality of the use of police power, as on occasion are public panels:

ACC Patrick: We ask outsiders, as it were, to Gold meetings and to some of our planning meetings around public order events. We get that sense around what is acceptable.

DCC Susan: if you think about some of the fracking demonstrations that we've had recently – and I suppose what we have been really clear is why we're doing

what we're doing. And then he [the PCC] has brought in a public panel for us to explain that to – to scrutinise our plans.

DCC Susan also drew on other sources to gauge consent, including surveys (often conducted for other purposes), albeit her conclusion is contestable, particularly given the difficulties in interpreting such information, along with questions that can be asked about the relevance and reliability of such surveys, including potential bias related to sampling, non-response, the respondent and the coder (Lynn and Elliot, 2000: 8):

You get some surveys that are very small sample size and perceptions and you get a feel from, you know, whether it is sort of, media, press, engagement with things like do older people want to join you and become volunteers, turn out to your fete – you know, I suppose there is no one measure is there? There's a whole range of things that makes you feel as though the public are quite comfortable with the policing that they are getting.

However, CC Paul felt that a degree of objectivity could be achieved if a systematic approach was used (although this thesis does not test this). He described how his force was trying to communicate more clearly with the public, supported by a university, which helped design the approach and analyse the data:

We are trialling up in the XXXX part of the force now different styles of communication, so we use [name of software database] to understand the demographic of our area and we know – we think we know – the sort of approach that people would like. So, we are trialling, sort of, Facebook, Twitter, right down to low-tech post that goes through people's doors. So, that's been running for about XXXX [time] now so I have the analysis of what's the best way of finding out what is important to people and then telling them what's been done and what has been the impact.

As CC Paul indicates social media and digital methods seem to be playing an increasing role in the conversations that chief officers hope helps to build consent and DCC James and ACC Bill reported that:

DCC James: Obviously, a lot of stuff now can be done on line – XX,000 followers on Twitter; huge numbers of communication and a lot of the community – you know – the consultation that the PCC has done – they have

done loads of evening meetings, but they have got XXX responses online. So, everybody – it is easier for everybody to do it digitally and to try and get a feel for where it is at.

ACC Bill: probably we are more able to – and I use the word ‘consult’ loosely - more able to communicate with a wider public than we were ever able to do and that’s around the social media piece.

As ACC Bill suggests, the extent to which digital channels facilitate meaningful dialogue is debatable, although the same criticism can be made of traditional consultative mechanisms. Whether the growth of digital conversations is motivated by effectiveness, rather than convenience and cost, is an issue that could be explored further but it has not been pursued in this research. Increasing use of social media and digital communication may also, as Lee and McGovern (2014) argue, not simply be a benign attempt to engage with the public, it could represent an attempt to bypass the scrutiny of journalists to present a glossed and unmediated image of policing.

DCC James (above) sought to demonstrate the advantages of social media engagement by reference to the numbers of digital interactions and quantitative attempts to gauge consent were not confined to analysis of social media. Surveys of public attitudes and other information about police/public interactions, which might (at best) provide partial and proxy measures of consent were also used. Some of the limitations of these approaches were recognised by DCC Anthony and CC Tom:

DCC Anthony: Public attitude surveys – all this sort of stuff around public confidence. There’s satisfaction, which is not about consent but there are things which you can use as proxy measures around are people broadly happy with what we are doing for them, with them, occasionally to them – often to them. So, there are those, kind of, formal measures. Again, sometimes they become over weighted – the number of times you see people talking about complaints numbers as an indicator of confidence in police. Frankly complaints numbers – the whole complaints process is so unsatisfactory, for the public as well as for us, that – how would you ever use that as a measure?

CC Tom: there are all sorts of scientific ways with service users to determine – they do surveys, they do ‘you said – we did’ – all of those forums. But we all know they – they only capture well, first of generally where we have had – where

we have had a customer-supplier relationship with them – so a transactional type thing, not the general public.

As DCC Anthony and CC Tom recognised the data gathered from surveys and interactions with the public tended to represent the views of those who had received service from the police, notably in victim surveys - which can be problematic and open to challenge (Schwartz, 2000) - and the more general confidence data was gathered from people who may have had little, if any, recent contact with police. Complaints data was mentioned by DCC Anthony, but this is limited to those with the confidence to engage with the system. At best these metrics are problematic, partial and proxy measures of consent.

Participants presented an array of options for gauging and developing consent to the exercise of police power. However, despite the overwhelming use of consensual policing as a justification for the use of police power, the impression was of a subjective and ad hoc approach, which may be increasingly inadequate if policing by consent mutates into a quest for mandates.

### **From consent to mandate**

The concept of consent was starting to be stretched to include garnering mandates for specific actions and use of power in the 1980s (Reiner, 1991). This has continued, as described by DCC Anthony:

the only way we really get into issues of consent and the use of police powers, is by actively engaging with, and listening to, the people it affects the most and who, therefore, are probably the people whose voice we need to listen to most around it ... if you take a broad view across the country, you'll probably find stop and search is pretty well accepted. It's not seen as particularly contentious ... You go into some parts of any city, certainly, and you talk to some communities and their experience of stop and search is very different ... We talked about we are going to increase the use of stop and search, but it is the XXXX Commander's responsibility in places where this is, kind of - we were focussing. They must gain a community mandate to do so. So, they must up their engagement, make sure they are actively engaging with the black

community – particularly the black community linked in to youth, if not young people directly, which is, kind of, perhaps sometimes problematic for us isn't it? So that our – our use of the power is not something that we are imposing on people, it is something we are doing – we are actively seeking the consent of the community most affected, both in terms of the suspect population and the victim population, for our increased use of the tactic.

The public mandate that could be argued to underpin consent was sometimes linked with an appeal to support the use of police power to protect people, coupled with assurances that such powers would be used ethically, as CC Simon argued:

legitimacy is really about that mandate that you are given by those who you serve to do what you need to do to keep them safe ... It is about attitudes and behaviours; it is about culture; it is about understanding that we have to be very professional in the way that we conduct ourselves.

It is hard to see how, using the methods described, meaningful judgments are made about whether supposed consent amounts to more than an absence of active and obvious resistance to the use of police power, and this is now explored further.

### **People 'just probably grow up here and accept it'**

Four participants considered that compliance born of habit, disinterest, or fear of the potentially damaging consequences of active resistance ('dull compulsion' as Carrabine [2004] proposed in his study of disorders at Strangeways Prison) risked being misinterpreted as active consent. These participants highlighted the potential for complacency induced by interpreting silence as consent, succinctly put by ACC Chris, 'you could argue that the absence of complaint and crisis is by implication a consent – it's not is it because it doesn't go far enough, does it?' ACC Patrick seemed less concerned, 'you work on the basis that you probably won't get a lot of feedback if it is OK because people don't tend to', although he did comment on picking up signals from individuals, the media and politicians.

DCC Anthony's comments, below, about how intimidating police can be and concerning the dynamics involved in stop and search suggest that dull compulsion could compete with a narrative of consent:

you have a murder somewhere and there is a community impact assessment and so often you see the thing says ‘yeah, no community issues – no community concerns’. And you, kind of, go and say: ‘Okay, really, how do you know that?’ And, I’m, kind of, simplifying, caricaturing, perhaps but ‘No-one has rung up and told me they are worried about it.’ Or ‘I’ve had a meeting with the great and the good across here and I’ve said this has happened and they say: ‘Okay, thanks for telling us’ and so no-one is telling me they are worried about it ... often we assume that we feel accessible because we are very happy to talk to anyone – anyone can pick up the phone and talk to us, which doesn’t necessarily recognise how impenetrable we are, often, how intimidating we can be ... stop and search is difficult here because it is always, kind of, it is never – it’s always, I don’t know – I don’t mean active resistance but it is always unwelcome. It’s always verbal, it’s always tense and so on. That tells you something about the level of consent, even if it is amongst a relatively distinct part of the population – i.e. youth, usually – often minority youth.

CC Rachel’s recognition that compliance can result from fear hints at a case for reinterpreting a story of silent consent, partly, as one of dull compulsion and coercion:

the test then is if those people who don’t see us as legitimate, or we are concerned about their level of consent, so part of it is: do they ring 999 or 111; do they give physical resistance when we do need to arrest them? And actually, those rates are pretty low, even for people who have, probably, good personal reasons for not – not trusting us. And I guess some of that might be fear.

CC Trudy’s comment, below, that people ‘just probably grow up here and accept it’ can be framed as a prosaic version of Blake’s (1794) vision of ‘mind forg’d manacles’, whilst her invocation of Dixon and Peel alludes to the myth making involved with narratives of consent, which she wryly juxtaposed with the frequently disappointing experience of police/public contact:

I want to say, you know, it’s society that gives us the right to do that because they have signed up to – but then I think that’s probably far too active because most people just probably grow up here and accept it as it is. But you vote – you vote for the Government that sets the legislative framework but you also probably – you are brought up with the Dixon of Dock Green image of we are -

Peel's Principles – we are your view, we are you, we're just here to help you. So, I think, for me, it comes from, I would say, the view that society generally think – it's the fact that, you know, most people think we're great until they have a contact with us, don't they?

It was not clear how participants distinguished consent from dull compulsion. In seeking to do so, debatably, the police should try hardest to understand those that they have the most adversarial contacts with and it is how this is, or is not, achieved that is turned to next.

### **Listening to 'them', or to 'the great and the good'?**

Ten participants expressed significant concerns about the quality and extent of police engagement with people over whom power is frequently exercised; who might fall into the category of 'police property' (Lee, 1981: 53-54), particularly people without power who do not attract sympathy or support from wider groups within society; indeed, many may approve of this exercise in control. Examples of those subject to this exercise of police power include disadvantaged young men and minorities who are disproportionately arrested or stopped on the streets, who tend to be policed more than they are protected (Loader, 1996). CC Alan's comment was typical:

I am not sure we really test that consent [of those over whom power is frequently exercised] ... No, I think there is some more way to go with some particular groups and in particular, identifying them as a group, as opposed to deviant members of another group.

CC Phil's views were similar, and he noted that his PCC's consultation did not fill this gap. His observations suggest that chief officers and PCCs predominantly listen to the voices of those who policing is perceived to be for, the 'great and the good' and 'deserving' victims, or 'us' in terms of the dichotomy suggested by Girling, Loader and Sparks (2000), whilst those whom police power is commonly directed at, 'them', are largely unheard:

Yeah, I – I think we're very poor at that. I don't think, as an organisation, we tend to seek to consult with the groups that you are referring to [those over whom power is more frequently exercised] and I don't think [the PCC's] consultation



tends to get near that either because very few of those people will turn up to the forums that he's – he's conducting. So, I guess – yeah, it's very unstructured how we do that. I can't think of how we do that in any form of meaningful way. We tend to – we tend to consult with the great and the good and those in that omnibus situation that you have referred to. Those that come into contact with us largely as victims.

Participants felt that engaging in these conversations was not easy, as CC Tom noted:

there are some sections of the public in a city like this - you are never going to get their consent. They are very challenging communities. So, none of it is simple.

Whilst most participants recognised that there was more to do in listening to those over whom power tends to be exercised, four suggested that the police service had been on a journey and more was being done to hear the voice of 'them'. However, the examples provided appeared to be an improvised set of activities that would benefit from being part of a coherent and evidence-based approach. The initiatives also fail to address Habermas' (1976) critique of legitimating discourses in liberal democracies where there is an inequality of arms in the conversation between those with power and the subordinate, which at best results in a false and fragile legitimacy. Thus, attempts to create dialogues should strive to create some equality of arms. None of the efforts to listen to those over whom power is frequently exercised addressed this critique. The following comments illustrate the type of initiatives raised, albeit the example of listening to 'them' cited by ACC Chris seems to be a by-product of pragmatic crime reduction activities. CC Paul's example alludes to the resistance, within and without policing, to listening to 'them' but also hints at a legitimating narrative that distinguishes policing 'now' from policing 'then'.

ACC Chris: I think we do do some stuff about young people, about – the Youth Justice Service now provides an entry into the justice system – giving people diversionary activities, giving people opportunity but interesting. I can't give you dates but going back about two or three years, there was a – the PCC held a seminar of the public with young people.

CC Paul: there's been uproar about an exit survey in custody suites and sort of, what was the experience like for you? I joined an organisation that couldn't – in the 1980s that couldn't care what that experience was like for you.

Most participants recognised that many conversations police hold, ostensibly to gauge or build consent, are shallow and that it is arguable whether widespread active consent can be identified. More focused and informed activities, such as those 'based on principles of deliberative democracy and citizen participation' (Virta and Branders, 2016: 1146), and a range of qualitative and quantitative techniques that are informed by credible research, might provide a better foundation for building public consent to the right of police to exercise power, but no examples of similar approaches were mentioned by participants. Although, since fieldwork for this research was completed, the N8 Policing Research Partnership, involving eight universities in collaboration with police forces across the North of England, has started exploring innovative options, including deliberative democracy and Citizen Jury events<sup>27</sup>. However, until more coherent attempts are made to listen to 'the policed' the shouts of 'us' are likely to continue to drown out the voices of 'them'.

So far, this chapter has considered what consensual policing means to chief officers and how they gauge consent and listen to the voices of various publics. This research also sought to gain insights into participants' understandings of the right of police to exercise by examining tales of withdrawn consent, and these are turned to next.

### **Withdrawn consent**

All participants told tales of withdrawn consent and most considered that consent is a precious but precarious asset. A representative set of examples are set out below and themes are drawn out from them to help interpret chief officers' understandings of the right to exercise power.

ACC Chris raised contemporary concerns about fracking (also noted by CC Trudy and DCC Susan), which related to a perceived misalignment of values and priorities between

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<sup>27</sup> Under the Public Engagement Strand of the N8 Policing Research partnership, being led by Dr Liz Turner at the University of Liverpool; there were no publications at the time of writing this thesis. <https://n8prp.org.uk/public-engagement/> accessed 21/02/2018

those with power and those of the subordinate, which Beetham (1991) contends undermines legitimacy. The policing of fracking can also be argued to challenge assertions that police are prioritising the protection of the vulnerable, as can companies involved in fracking be categorised as vulnerable?

ACC Chris: I do have some underlying concerns about policing protests and – and, you know, if – the stuff that we are doing nationally around fracking ... Because ... I'm pretty confident you would get a high return to say it's bad for the environment. Yet, we are seen as central to enabling it to happen.

CC Rachel's anxiety about the quasi military impression given by some officers and CC Trudy's concerns about the equipment now routinely carried by police have echoes of Sir Robert Mark's (1977) stress on minimising the use of coercion when building consent.

CC Rachel: when you see a photograph of six black lads being searched by ten white cops, it just looks like an army of occupation.

CC Trudy: the whole use of force thing and the arming, and their Taser and this dichotomy we have got because we are edging – because we are shrinking still and yeah – more of us are wearing guns, so we are, kind of, going that way, but that whole – people don't feel comfortable with it.

CC Alan argued that in building consent now, there were lessons to be learned from earlier examples of withdrawn consent, particularly when dealing with competing interests:

in more recent times; wind farm developments in XXXX – how that still might play out in terms of what is our role in doing this and then, of course, we have issues, generally in other areas, in industrial disputes and employer relations. And we only have to cast our minds back to things like the miners' strike ... the whole policing by consent thing can break down if they feel that, you know – there is a distinct feeling there that the police were not their police.

The long-term impact of withdrawn consent resulting from the 1984 to 1985 miners' strike was in the mind of other participants, as CC John and DCC Anthony recalled:

CC John: I had no concept of the damage we were doing to communities during that miners' strike. I was solely focussed on the fact that my salary, which was £300 a month was going up to £800 a month ... nobody ever talked to me about social policy, social interaction ... with very little consideration by sergeants, inspectors or even more senior, about the social impact.

DCC Anthony: Miners' strike – that's hugely symbolic for me – I was a PC then. I think it was shameful – utterly shameful. I thought that at the time – did a couple of tours in Derbyshire and Nottinghamshire and places – hated it. Utterly shameful. And my view on that hasn't changed as time's gone on. XXXX dispute – XXXX [industrial dispute]. I was a Sergeant then. I remember us turning out there, not because I thought the XXXX weren't piss-taking, Spanish-practicing sort of people but the way we were used in that, I didn't like. Is that about – so, we were used, I think. It's not so – but we were willingly used.

As DCC Anthony indicates the miners' strike was only one example of participants' anxieties about withdrawn consent and the potential for the past to haunt the present. The policing of disorder and industrial disputes was a recurring theme. The examples highlight chief officers' concerns about managing competing interests and legitimacy; particularly anxiety about police as agents of state power in conflict with the interests of local people. However, some participants sought to distance policing now from earlier crises of consent.

DCC James: we are, as a service, having to deal with a lot of legacy issues: undercover policing, child abuse enquiries.

CC Simon: one of the few times in my career - 1981 and 1985 [disorders] – when I felt like we had not got things right and actually I did feel like we were a bit of a 'tool of the state' – 'Maggie's boys' – and that we were in a very unsavoury conflict sort of relationship with the communities a lot of the time.

CC Phil: in the miners' strike or some of the XXXX protests that I saw whereby, actually, the notion of having consent for what we were doing, was long out of the window in my view and we were there to suppress people.

Public order policing, including the policing of industrial disputes was a common theme. However, five participants suggested that there had been improvements in public order

policing, in part based on greater engagement with the public, through neighbourhood policing but also in improved planning and tactics. In his case study Waddington (2017) found that relatively new approaches, such as use of police liaison teams, had improved public order policing. The comments from CC Rachel and CC Simon are representative of the five participants citing improvements:

CC Rachel: we went through an era where we saw public order policing as successfully dealing with mass outbreaks of disorder, rather than planning, negotiating so that we didn't have any mass disorder ... I get the impression there has been a mind-shift and some people have left, which has enabled change.

CC Simon: I think, you know, the riots and the miners' dispute, there was a discomfort that I had ... I just felt as though we were moving away from what a service would want to have by having a relationship with these communities which is based on consent, which does engender trust and confidence and I just felt it was so confrontational that there were going to – it was going to take a long time for those wounds to heal. And I think it did take a long time and it took, I think, the introduction of neighbourhood policing, round about 2005-6-7,<sup>28</sup> to really begin to build those bridges again.

The 2011 disorders were not identified by any participants as clear withdrawals of consent, as CC Tom's claim illustrates:

when the riots broke out in 2011, the public at XXXX mobilised in our support. They came out and tried to mediate with youths, they took to the streets alongside us, they fed and watered our staff.

There were also elements of what might be considered routine local policing where participants identified a break down in consent to the use of police power, as illustrated by CC Rachel:

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<sup>28</sup> The National Reassurance Policing Programme (led by CC Matt Baggott) started to roll out neighbourhood policing in 2005, leading to the term 'neighbourhood' replacing 'community' in most police officer discussions of community/neighbourhood policing England and Wales; though the roots of neighbourhood policing can, arguably, be traced back to the Scarman Report in 1981 (Longstaff et. al., 2015).

years ago, in XXXX, I had had a couple of days off and had come back to find them [more junior police officers] planning this, kind of, major operation to basically, kind of, harass and then evict some travellers from a site – which was basically because local residents had rung up and said that they didn't like them there because they are all thieves. I don't think we had had any crime reported but you looked at it and I went 'Whoa' because that was racially motivated use of police powers in my view.

There appeared to be a broadly shared construction of the past and present, with 'then' generally framed as an era where there was less consent and more coercion and 'now' portrayed more benignly, with chief officers 'now' tending to act with greater consent and legitimacy.

Only three participants mentioned the impact of roads policing enforcement on consent, perhaps surprisingly given that it is an exercise of power that impacts on more people than most other powers. Roads policing also involves many adversarial contacts (Corbett, 2008) with those who might otherwise be categorised as members of a generally law abiding 'us'. DCC James seemed bemused by the intensity of the negative reaction to an enforcement approach that he believed saved lives, again illustrating conflict between narratives of consent and protection:

I feel the force's reputation was damaged by some of that about whether that [roads policing enforcement] was proportionate. I look back and when I was [earlier rank] XX-XX people died on roads in [Force area]. It is now XX – it is a lot less. It is a lot less. We did change behaviour out there but there was a lot of damage there wasn't it?

Withdrawn consent can relate to the failure to use power, as well as to contested use of power, although this issue was only directly raised by DCC Anthony:

an utterly failure of investigation that let down – so it was the non-exercise of power wasn't it? There is still a debate around what role corruption played in that – absolutely glossed over in the Lawrence Enquiry ... it was so focussed on racism, I don't think they wanted to get distracted anywhere else.

DCC Anthony highlights the delegitimising impact of failure to use power properly and of incompetence and touches on the risks posed to consensual policing by the poor

behaviour of officers. Four participants described some of the relatively recent delegitimizing behaviours of former chief officers, which along with examples about the policing of fracking and windfarms, did not fit the pattern of painting a positive picture of 'now'. The comments from CC Paul and DCC Anthony are representative.

CC Paul: I can think of a chief [known to the researcher] that is no longer working ... who blurred the lines between probably what wasn't acceptable in your private life anyway with – and they forget that we are in a very privileged position in society and that comes with constraints on – on you [referring to the researcher's former position as a chief officer], me and our families. And because you are in the public spotlight, to think that you can act in a way – an inappropriate way, then you are just naïve in extreme.

DCC Anthony: the feeling of invulnerability that grew up – the feeling that 'because of who I am, or what I am – and/or what I am, I can do this and who is going to question me?' Whether that's 'I choose to go there' with 'whatever arrangements are made for payment', 'I choose to accept this', 'I make this decision', 'I listen to these people', 'I don't listen to these people' ... clearly was not sustainable. ... That, kind of, living in a bubble thing and becoming out of touch with the rest of the world really – the rest of the organisation.

DCC Anthony's comments on invulnerability and entitlement has faint echoes of the concerns that Young (1958) raised in his dystopian vision of a riven society resulting from the dominance of arrogant meritocrats (meritocracy was a term coined by Young, which was intended to be pejorative), who not only had power but felt that they were entitled to their positions and privileges due to their success in passing exams and jumping through hoops to reach the top. Consequently, they resented and rejected challenge, leading to conflict and dystopian consequences. Caless (2011) describes the many obstacles that chief officers negotiate to reach the top and, as illustrated in chapter five, contemporary chief officers tend to be academic high achievers. It is possible that the unacceptable behaviour of some former colleagues, including the mistaken feelings of invulnerability that DCC Anthony described, alongside a wider history of withdrawn consent, may have contributed to participants adopting a more cautious approach to the use of power. This could partly explain the re-emergence of a more careful (or bland) approach, like that described by Loader and Mulcahy (2001, 2001a). Scandals involving

chief officers may also have fuelled participants' anxieties about their own legitimacy. Chief officers' involvement in aspects of performance management, that arguably led to use of power that undermined consent, was also a concern for participants; and these stories are turned to now.

### **Performance management and consent**

Participants were asked about the impact of performance management (associated with the wider phenomenon of new public management, as discussed in chapter three) on the right to exercise power and on consent; this led to thirteen participants telling more tales of withdrawn consent. There are similarities between these accounts and those that Caless (2011) uncovered, which also revealed an unhealthy relationship between chief officers and the Home Office and HMIC. As with Caless' (2011) chief officers, some of the participants in this research saw Government as being at least as culpable as chief officers in failing to control the negative consequences of this form of management, as CC Tom noted:

it all came from Government. You know, the Centre tells you what to do, when to do it, how to do it, now we're going to measure you, now we're going to put you in a league table: 'Ooh look, you're bottom' – now we're going to kick you. That's the way the system worked. And that had a direct impact on the public.

CC Alan also argued that there were negative consequences but added a caveat, 'the intention behind the numbers was right, the use of them, I think, was not right and took the police officers – police service away from the public.' An example provided was the New Labour Government's Street Crime Initiative, launched in 2002, which intended to reduce street robbery in areas with the highest levels of these crimes. Machin and Olivier (2011) found, in their Home Office funded research, that robbery did fall in the street crime initiative areas, compared with areas that did not attract the additional funding for the initiative. However, three participants suggested that this initiative partly undermined policing by consent. CC Trudy associated the initiative with disproportionate use of police powers:

The Street Crime example is a really good example where there was immense and incredible pressure around one particular crime type, which definitely drove



a certain approach and certain types of behaviour ... how driven that was through Government and Section 60 usage and things. So very indiscriminate, invasive use of policing powers and the kind of pressure being applied that clearly impacted significantly on the XXXX community [a minority group], mainly because a lot were robbers ... we ended up with disorder, albeit not on a large scale but still significant disorder because of that.

Participants did not confine their comments about quantitative and target-based performance management approaches to specific initiatives and CC Paul noted the potential impact on legitimacy:

in the pursuit of raw numbers, you can end up completely distancing yourself from the population that you are there to police.

Whilst CC Greg noted the potentially perverse impact on the way power is used on the streets and inside the police organisation:

We have been through the Dennis O'Connor [former HMCIC and CC] years of the reds and greens and where are our targets and what are our percentages and are we hitting the target or not. And I think what is now universally accepted is it leads to some really perverse behaviours such as we'll put a filter cordon across the High Street on a Friday night until we have got ten cannabis hits and then we don't have to do it for the rest of the month because we have hit our quota. That's not healthy, that's not good, that's not discretion. We have seen bullying performance management of – and a phraseology, certainly in this force before my time was 'blood on the carpet'- type language, around 'driving' performance and growth.

Some participants recognised that they had contributed to these types of performance regime. Only two (both recently appointed as ACCs) deliberately distanced themselves from involvement. CC Phil reflected on his career:

at different points in my tenure as Deputy Chief Constable, very, very robust at managing performance, in a way that was not, on occasion, constructive I don't think. I left – left some casualties behind.

Some participants felt this approach that had largely gone, as DCC James noted, 'ten years ago, we were in a very different regime where behaviours were impacted adversely

by the targets.’ The predominant view was that performance management had evolved positively and that many of the negative aspects and perverse behaviours had been mitigated. This may indicate a potential change in the approach of chief officers to the exercise of power and a recognition that more cautious and considered styles are needed to build consent. However, it can also be interpreted as contributing to a discourse of a better ‘now’ than ‘then’. But there were concerns that the negative aspects of performance management could return, particularly in relation to the impact of the Crime and Police Monitoring Group (CPMG) at the Home Office and the associated process of engagement with the CPMG and ladder of interventions used to put pressure on chief officers and PCCs, in forces that the CPMG perceive to be in danger of failing, as CC Paul reported:

A few colleagues, sort of, said: ‘We’re not going to look at performance.’ But HMIC were and the Home Office were, and they ended up on the naughty step and the ladder of interventions.

It may also be naïve to think that there might have been an earlier period of enlightened management, as CC John recalled:

when I joined, my Sergeant expected me to have a dozen bookings a day. That’s a lot of bookings in a day isn’t it? So, I used to stand on XXXX in XXXX and book everyone that came out of the No Left Turn. They were people like me and you who had made a mistake. I booked them all. My Sergeant got his 12 bookings. And I became quite ruthless. Is that what we want from our police?

This pre-dated new public management, so it is reasonable to ask to what extent this is a persistent adverse aspect of police management culture or cultures, although this is a question left for future research. However, not all participants were overly critical of quantitative and target-based performance management. Eight participants talked in some detail about a journey, from a blunt quantitative style to a broader qualitative method and DCC Anthony argued, ‘it was a journey we needed to make’. CC John was typical, noting that some benefits had come from a quantitative approach, although his assertion linking crime levels with the performance style is not tested here:

In the 1990s, we moved to new public management, which was league tables, targets, numbers ... We got completely driven by a numbers game, not all bad

because actually, crime did come down. And some of that – generally, we got better, didn't we?

The extent to which the change in approach to managing performance was a case of the Home Office setting an agenda that chief officers meekly followed, as opposed to the Home Office facilitating changes that chief officers wished to make is not clear. CC Phil linked these changes to the claimed new emphasis on vulnerability:

In terms of performance, reviews that we do, therefore there is more focus around vulnerability and risk and what – what the areas are doing to, for example, support the focus around child sexual exploitation.

Overall performance management approaches, associated with new public management, were identified by participants as, on balance, contributing to withdrawals of consent to the use of police power. Recent reported changes to styles of performance management may indicate that chief officers are adopting a more cautious approach to the use of power both within and outside the police organisation but could also be part of a construction of a benign 'now', where consent is built through fairer and more proportionate use of power, in which participants have clear stakes as very senior leaders, contrasting with a less legitimate 'then'.

### **Procedural and Organisational Justice**

Fair use of power can also be associated with procedural justice theory (Tyler, 1990, Sunshine and Tyler, 2003 and Hough and Maffei, 2013), which was influencing the thinking of participants and was drawn on by eight participants, largely implicitly, as a process for building consent to the use of police power. CC Rachel invoked procedural justice directly:

being treated with respect at some level, treated fairly ... even people who have ended up in the prison service, can recognise police officers as being 'good' people in a sense, in terms of the stuff that we would now talk about, in terms of procedural justice.

CC Phil's comment was also typical of the influence that procedural justice appeared to be having on participants' understandings of the right to exercise power:

[in the context of trying to reduce dangerous motorcycling] It was [previously] just about, we're here to enforce the law and it was not about: let's have a conversation with these people and understand what their motivations are, whether they want us to be doing this and how and also, how they feel about some of their colleagues [motor cyclists] who are clearly giving them a bad name.

Similarly, seven participants made a clear connection between fair use of power within the organisation and how power was exercised over the public. There was an understanding of, and support for, organisational justice approaches (Greenberg, 1987), which was recently examined in Durham Constabulary (Bradford et.al., 2014), the latter research was directly referred to by three participants. CC Greg's account was typical:

I cannot expect my staff to behave differently with the public to how they are treated by the organisation. So, if they feel downtrodden, unfair, bullied that is the way that they will treat the public. ... behaviour breeds behaviour.

Procedural justice research alone does not provide a template for securing a right to exercise power and can be challenged as it may not work in low trust environments where security is a significant concern for citizens (Goldsmith, 2005). It can also be counterproductive when working with minority groups, who may see it as insincere (Cherney, 2012). However, it is hard to argue against treating people fairly and respectfully and the influence of procedural and organisational justice research on chief officers' understandings of the right of police to exercise power might be viewed as benign and has the virtue of having an evidence based; although the concerns of Goldsmith (2005) and Cherney (2012) need to be weighed in the balance, as do the reservations expressed about the limitations of the survey data supporting the research (Sindall et. al., 2012) and concerning causality (Jackson et. al., 2012). Vitale (2017: 9% into book) also argues that procedural justice approaches are pointless when 'political leaders have pitted police against the public whilst also telling them to be friendlier'. Yet, most participants voiced support for the key principles of procedural and organisational justice, emphasising respect, fair treatment, conversations and trust.

However, overall the discourse of consent was broader than this and, in contrast to the principles of procedural and organisational justice, lacked clarity. The main elements of

these narratives of consent, as justifications for the right of police to exercise power, will now be drawn together.

## **Conclusion**

Chief officers continue to subscribe to the concept of policing by consent and use it to explain the right of police to exercise power. In stressing the importance of minimal coercion, the rule of law and of values shared broadly with wider society, participants echoed the views of many of their predecessors. Consensual policing also encompassed a symbolic commitment to protect citizens and, in part, this emerged in the Peelian myths invoked by many participants. Broad themes were set out but, overall, explanations of consensual policing lacked clarity and were particularly hazy when considering challenges posed by, the increased display of defensive equipment, anxieties about managing competing demands and recurring crises of legitimacy, notably those provoked by the behaviour of officers, including chief officers. However, a legitimating discourse of policing by consent, infused with policing myths and arguably calling on a broader (but dubious) narrative of societal consensus (Emsley, 2014), may be a fog, which conveniently obscures the inevitable use of coercive power by police when maintaining order.

Participants agreed that dialogue with the public, or publics, was crucial to continued consent and that neighbourhood officers played an important role in this; yet as the research was being conducted the number of these officers reduced and concerns were being expressed about the future of neighbourhood policing (HMIC, 2017 and Higgins, 2018). Dialogue is not an activity confined to neighbourhood officers, yet when participants were asked how these conversations were conducted and how consent was gauged and built, the approaches described were largely ad hoc and seemed inadequate, particularly as the notion of consensual policing expanded to include seeking mandates for specific exercises of police power. There was a risk, recognised by some participants, of an absence of obvious resistance being construed as consent. It was not clear how active consent was distinguished from Blake's (1794) 'mind forg'd manacles' or a 'dull compulsion' (Carrabine, 2004: 180) rooted in habit, apathy, or fear. Participants largely recognised that processes to listen to the voices of 'them' (those over whom power is frequently exercised) were inadequate and that the

voices of ‘them’ tended to be drowned out by the clamour of ‘us’, or the ‘great and the good’.

Tales of withdrawn consent were told by participants, with the policing of disorder and industrial disputes being common themes. Underlying such stories were anxieties about misalignment of values and priorities between the police and (some of) the people they should serve. Concerns about being used as tools of the state were also voiced, though it is difficult to see how this tension can be avoided as police embody the power of the state both to protect and coerce. In accounts of the policing of issues such as fracking and windfarms the threat posed to consent by competing interests was in the foreground. The emergence of a narrative of vulnerability also posed a challenge to consensual policing, where many people had alternative priorities for the use of police power. Another strand of stories of withdrawn consent emerged from discussions of the impact of performance management approaches associated with new public management and there was broad agreement that perverse outcomes flowed from this style of management, potentially undermining consent. Although participants felt that performance management was now, generally, more sophisticated and that this contributed to a more considered approach to the use of power, inside and outside the police organisation. The discussions of withdrawn consent, including performance management, seemed to reveal a shared (by most participants) construction of a generally benign consensual and cohesive ‘now’ contrasting with a more coercive ‘then’, when participants would not have held the command positions they now occupy.

Issues relating to the fair use of power, respect and constructive conversations also emerged when participants deployed, sometimes explicitly, the main tenets of procedural and organisational justice theory. These theories seemed to have influenced understandings of the right to exercise power held by chief officers and the key themes of fairness, respect and dialogue may appeal to the generally liberal tendencies of participants, that were discussed in chapter five.

It can be convincingly argued that consensual policing is a manufactured myth but that does not mean that it has no consequences for how police, including chief officers, think and behave, which in turn impacts on wider society. Policing by consent influenced the understandings of the right to exercise power held by participants.

However, the concept is undermined by the difficulty of achieving consensus on policing issues. Further, demands on the use of police power compete and chief officers are unable to escape the role of police in representing the power of the state, particularly its coercive capacity. Recurring concerns about legitimacy also bring into question the extent of public consent. Policing by consent should not be viewed in isolation, as participants deployed this justification for the use of power in conjunction with arguments about protecting people, particularly the vulnerable and alongside understandings that emphasise the importance of law and associated checks and balances, and it is the latter that are addressed in the next chapter.

## **Chapter Eight**

### **Law and checks and balances: a necessary but insufficient justification**

#### **Introduction**

This chapter examines explanations of the right of police to exercise power founded in law, the third broad understanding that emerged from data gathered for this thesis. As discussed in chapter seven, law was commonly cited by participants as an element of consensual policing. However, the emphasis put on the centrality of law was such that it requires specific consideration. Participants extended this justification to encompass checks and balances located in law and these arguments will be assessed. However, as will be shown, participants expressed anxieties about the effectiveness and fairness of these checks and balances and worried about the consequent perceived precariousness of their own positions. The dissonance and apparent conflict between the use of explanations based in law and associated checks and balances, and participants' anxieties and frustrations with these mechanisms is interrogated.

It was probably predictable that participants would assert that the law provides a right to exercise power, as the law and associated checks and balances play a central role in theoretical understandings of legitimacy, notably (as discussed in chapter two) in Weber's (1922/23) arguments about legal authority and the legitimating benefits of bureaucracy. Law also features as Beetham's (1991: 15-16) first dimension of legitimacy, conformity to established rules. Addressing policing directly, and critically, Jefferson and Grimshaw (1984) argued that without robust legal accountability claims to legitimacy were questionable. Participants did not cite these authors, but their arguments partly echo the theories. More radical approaches to legitimacy were not reflected in the stories provided by participants. Perhaps unsurprisingly no arguments emerged recognising Habermas' (1976: 142) critique of conceptualisations of legitimacy based on compliance with the law, as Habermas saw law in the capitalist state as being established by elites, even if in liberal democracies, (or 'Old European' states) they are competing elites.



Claims to legitimacy founded on law were also deployed by earlier chiefs. Sir Robert Mark (1977: 56) claimed due to being ‘answerable to the law, that we act on behalf of the community and not under the mantle of Government, makes us the least powerful, the most accountable and therefore the most acceptable police in the world’. Whilst participants in this research shared Mark’s view that law provides a foundation for the right to exercise power, they saw it as only one element and considered it was insufficient in isolation. They did not share Mark’s narrow view of police accountability and operational/constabulary independence, which seems to be based, partly, on Lord Denning’s (1968) ruling in *R. v. Metropolitan Police, ex parte Blackburn*. Mark did not factor in the right of police authorities to control budgets and require chief constables to report to them, accompanied by their power to appoint chief officers, and in extremis to dismiss them. Equally the administrative power of the Home Secretary, including influence over chief officers’ careers and the ability to block appointments (the latter power was ended by the Police Reform and Social Responsibility Act, 2011) was not stressed by Mark. His justification of the right to exercise power includes a defence of constabulary independence, an issue that exercised Jefferson and Grimshaw (1984) and Savage, Charman and Cope (2000), as they posited it served as a screen from scrutiny, since when questioned by police authorities, or other representatives of the public, chief constables could use the concept to justify not answering questions and pursuing their own agendas. This had the potential for conflict with those charged with holding police to account, as Simey (1988) illustrated in her account of her time as Chair of Merseyside Police Authority. Participants in this research did not extend their arguments to robustly defend operational/constabulary independence and the rationale for this is considered.

### **‘Ultimately the law’ ... and ‘the Brownie promise’**

All participants argued the law provides a basis for the right of police to exercise power, but none held the view that it was a sufficient justification. CC Alan saw law as the foundation for the right to exercise power but linked it to the structure the law provides for holding the police to account and to consensual policing:

Well, first of all it is the rule of law ... the rule of law gives that framework under which we operate. It’s the consent of the public for us to do this on their

behalf. And – and the fact that we will be their arm, if you like, of our society. And then the accountability as well, is really important – that we will answer for our actions.

CC Rachel also put the law first and linked it to democracy and consent:

Ultimately the law. So, you know, bestowed upon us by – by Government, by legislators. But underpinning that is a level of public confidence, public belief that we're trying to do our best – I think that's the Brownie promise isn't it? But, you know, there – there's good intent there because if we lose that, clearly the legislators are elected by the – the people.

CC Greg gave an example of the law being used successfully to constrain the use of police power:

that was five hours in XXXX Crown Court with three barristers drilling into me. So, there is a 'right in your face' consequence of your decision and use of power.

DCC James illustrated the importance of law with a recent case of an officer being imprisoned:

the words of the judge there – Police officers have significant powers and ... if they misuse those powers, they will go to jail.

CC John saw the law as providing parameters within which power could be used legally and legitimately, although he suggested the parameters were not well-defined:

we have to be servants to the law, don't we? I think when we step outside that then, you know, we have got no mandate to do that. But then the law will always be grey and will always be tested won't it?

Participants also cited specific laws which they took account of when exercising power. ACC Karen provided an example and made a link to understandings of the right to exercise power based on protecting people:

the Regulation of Investigatory Powers Act in 2000 – I actually found that hugely helpful because it is a great template in terms of checking and testing, not just what feels right to you, but applying a model around is it proportionate to use this level of force. Is it really necessary to do this here and now? That I

find really helpful in terms of being able to make the best decisions you can to protect the wider community.

ACC Patrick also cited specific legislation and connected law with a democratic mandate:

I think Section 60 [Criminal Justice and Public Order Act 1994, a contentious power to stop and search] again if it is managed okay is a legitimate method. It has been given to us by Parliament – if they didn't want us to do it, they shouldn't have given it to us in the first instance. Or should have given us the guidelines right from the outset.

Additionally, ACC Patrick referred to the Human Rights Act 1998, reflecting an emphasis placed on human rights by most participants:

consider the use of powers and policies to incorporate the Human Rights Act. That is one of the things that has influenced all of our decisions along the way – the right to – the right to protest, the right to life and even if we were to remove ourselves from the ECHR [European Convention on Human Rights] as the Home Secretary has suggested, there would still have to be something there.

Although CC Rachel was concerned that the actions of police might not consistently reflect the rhetoric:

Human Rights Act, when it first came in, you know, we had to record things as proportionate, necessary, lawful, legal – all that stuff – you know, it kind of, felt like a bit of extra bureaucracy, administration. And I still don't think we have cracked it because when you talk to people about proportionality and co-lateral intrusion, some will get it but for some it's just words.

CC Paul claimed the law was important as a justification when 'you get into the use of force and coercive action to get people to do what you want them to do because you have got the legal power to do it'. CC Trudy made a similar point in relation to the use of intrusive powers, 'if you authorise surveillance or something like that, there is a very clear legal responsibility'. Although she hinted that the parameters set by the law were not always clear and could be stretched, 'I think if you are dealing with something as a one-off, you might push the envelope in terms of being lawfully audacious'. This comment might even be a hint that sometimes law would be tested to the limits by chief

officers, particularly when CC Trudy's comments is juxtaposed with CC Rachel's suggestion that for some police officers the Human Rights Act requirements are 'just words' and CC John's observations that 'the law will always be grey and will always be tested' (although CC John did not say who was testing the law). Whether it is appropriate for chief police officers to push the edges of the law (even in pursuit of some Utilitarian greater good) is a moot point and, somewhat polemically, parallels could be drawn with accountants pushing the boundaries between legal tax avoidance and illegal tax evasion.

DCC Anthony went beyond questioning the clarity of the law to raise the conundrum posed by the illegal use of police powers that might be considered legitimate by many people, reminiscent of the 'Dirty Harry problem' (Klockars, 1980):

The old, kind of, cuff round the ear type of thing is the euphemism that people use for unlawful use of force that you'll find people always say 'Yeah, that was fine' and hanker for it or whatever. It might be generational, it might reflect the places people live in, it might be class or socially – all sorts of things. But there's things like that, that are, kind of, where people, kind of, condone things that you couldn't say are lawfully legitimate.

### **'Legality and legitimacy are not necessarily the same thing'**

The converse of the Dirty Harry problem is the difficulty in justifying the use of laws that are not viewed as legitimate by sections of society. This features as Beetham's (1991: 15-16) second dimension of legitimacy, 'rules can be justified by reference to beliefs shared by both dominant and subordinate'. DCC Anthony noted, 'the fact that something is lawful, doesn't mean it's necessarily legitimate to go out and do lots of it' and CC Trudy observed that some laws may not be viewed as legitimate, even by police officers:

the law sets that overall broad framework of what we think is – is a legitimate use of power to achieve what we want to in this country. But – yeah, there are certain things you probably think – think that one's a bit rubbish.

CC Tom was succinct, 'legality and legitimacy are not necessarily the same thing' and illustrated this with a tale of withdrawn consent:

When I took this force over, we were dishing out XX,000 fixed penalty notices a year for disorder – cannabis warnings. We were criminalising young people, perfectly within the law, simply to tick a box to satisfy HMIC and the Home Office – that’s not legitimate.

These comments echo Cassese’s (2012: 493) argument that legality and legitimacy are distinct concepts, ‘[a]n action is always either legal or illegal; it cannot be partly legal. In contrast, legitimacy is fluid and changing – it depends on perceptions and outcomes’. However, CC John’s comment about the ‘grey’ edges of the law, CC Trudy’s reference to ‘audacious’ use of the law and CC Rachel’s reservations about human rights rhetoric suggests that some chief officers would not agree with Cassese’s assessment.

Participants used law to explain the right of police to exercise power but said it was not a sufficient justification. They also argued that the checks and balances, provided by law, supported the right to exercise power.

### **Checks and balances**

Participants pointed to the checks and balances on the use of police power that were imposed by law and regulation and suggested the accountability and transparency they provided helped ensure power was used proportionately, and this supported the right of police to exercise power. Transparency also featured in accounts of consensual policing, largely in terms of the conversations held with the public or publics, but this chapter focuses on the more formal aspects of the system, which DCC Anthony saw as critical to controlling police and justifying their use of power:

the checks and balances around policing – with great power comes great – what was it? – with great power comes great responsibility ... so, I believe in our accountability mechanisms ... all of them are imperfect, but I am a big believer in the fact that they’re important.

However, participants did not think it is a well-designed or effective system, as CC Alan noted:

it's a very messy area ... it pulls chief constables in different ways. An example would be where HMIC has some very clear views of what they think a force needs to be doing, which are at odds with the police and crime commissioner's views. Now, the chief is accountable to the PCC but HMIC has no locus to inspect police and crime commissioners. All they can do is launch into a force ... it's a very, very difficult area.

CC Rachel felt a frustration with the official arrangements that reflected the comments of many participants, 'the formal ways end up feeling a bit like a charade – a bit of a – a – you know, something to be managed'. This suggests a conflicted attitude, with a theoretical acceptance of scrutiny running into exasperation with the practice of oversight. Attention now turns to aspects of the formal system that were raised most frequently by participants, starting with the two most influential players, PCCs and the Home Office before turning to HMIC, the IPCC, the College of Policing and operational independence.

### **Police and Crime Commissioners**

The impact of PCCs on individual chief officers varied, but all participants claimed to be pragmatically trying to make the relationship work. CC Phil contrasted the influence of the Home Secretary with that of his PCC:

do I lose sleep over the Home Secretary's letters? No, I don't. I am more likely to lose sleep over XXXX's [name of PCC] view of me, my performance, the performance of the organisation and whether I am delivering his objectives. Yes, I am. Because ultimately, XXXX [PCC] can hire and fire me, the Home Secretary can't.

Views and anxieties about the role of PCCs in providing a check on police power varied. There is insufficient data to fully explain the differences but, unsurprisingly, they appeared to be associated with the nature of the relationship between the participant and their PCC. CC Tom was typical in seeing himself as directly, but not exclusively, accountable to the PCC, 'I'm accountable, in a political sense, to the Police and Crime Commissioner'. CC Paul reflected the apparent view of all participants in his concerns

about an over-reliance on the connection between chief and PCC and on the inconsistent approaches of PCCs:

It depends too much on our personal relationship ... some want to be chief constables, others want to hold chief constables to account, others want to beat up chief constables, others want to stand next to them.

CC Trudy contrasted the oversight provided by her PCC with that previously offered by her Police Authority:

there was actually better governance and scrutiny under the Police Authority than what there is under the PCC. So, you had a more – you had a balanced challenge because you had a balanced group of people representing different areas, different parties.

However, PCCs and other elected politicians were also seen, by some participants, as a proxy for the public and this, it was suggested, could have a function in legitimating the right of police to exercise power, both through their perceived democratic mandate and in their role as an intermediary between the police and the public, as CC Greg noted:

that whole public engagement bit is almost a kind of – not lock, stock and barrel handed across to XXXX [the PCC] – but a lot of it is across to XXXX.

CC Alan maintained that PCCs had a democratic mandate that constrained and directed his use of power:

It would be totally wrong if the Police and Crime Plan then had absolutely no impact whatever on operational activity. That would then – I mean, that would be, as far as I am concerned, the chief constable obstructing the local policing democratic will. That would be wrong.

CC John also accepted the democratic mandate of the PCC and his comments reflect the pragmatism of participants:

there would actually be a conversation between me and the Police and Crime Commissioner and we would come up with a sensible, considered approach. But on some things – who am I to say? They have been democratically elected to lead this organisation. Who am I to say that what they believe is wrong?

An argument can be made that chief officers should, sometimes, challenge PCCs policies, particularly policies that infringe civil liberties or ignore the interests of people who have little influence. Some participants, whilst not contradicting an argument of a right to exercise power based on a democratic mandate, did strike notes of caution. As CC Tom noted the PCC 'is there as a proxy for the public. And this is where it all gets complicated because [s/he] is there as a proxy for the public but only about XX per cent bothered to turn out and vote.' Three other participants also noted the potential weakness of the mandate and raised concerns that echo Loader's (2002: 137) warning that the democratisation of policing poses threats to civil liberties, as ACC Chris observed:

You can vote a new police and crime commissioner in to change the content of your local police and crime plan. I suppose that is the democratic structure that we are in and that's the answer you give. The problem with it of course is democracy equals mob rule because that is just the majority isn't it?

ACC Chris's comments also allude to the traditional desire of chief officers to keep operational decisions above the fray of party politics, arguably a rationale for operational independence, which will be returned to later. Whilst PCCs were at the forefront of participants minds the Home Office continues to exert substantial influence over them.

### **The Home Office**

The Home Office was discussed in detail by participants. Reiner (1991: 249 -300), Savage, Charman and Cope (2000) and Caless (2011, 119 - 176), all found that the Home Office had been very influential. Indeed, many of Caless' (2011) cohort spoke at length, sometimes in emotive and negative terms, about their relationship with the Home Office. However, the Home Office's role was perceived, by participants, to have reduced following the governance changes introduced by the Police Reform and Social Responsibility Act 2011, as CC John observed:

The big player is your police and crime commissioner but interesting isn't it because if you think about the police service me and you grew up in, Home Officer Circulars were like the Bible, weren't they?



DCC Anthony was brief, 'the Home Office isn't at the forefront of my mind'. However, CC Trudy noted that the Home Office's influence was increasingly exerted through HMIC and her frustration showed:

there's a lot of drive and energy coming from the Home Office but none of it is very – in any kind of structured way. But I think they exert that through the HMI. So, they have created this façade of 'it's all local and we're giving it to PCCs' but actually we've created such rigid national standards that, in a sense, you could argue that's a national policing plan that we all have to adhere to, otherwise we get told that we're shit – publicly ridiculed.

However, not all the views were negative, a longer-term perspective was welcomed by CC Paul:

Theresa May has been around for such a long time now, she understands the business. She has a real determination to deliver something - we're probably actually seeing something delivered over a longer period than we ever had ... you don't tend to get the knife crime initiatives and stuff like that.

CC Paul's positive tone was not matched by other participants. The exasperation that can be detected in CC Simon's observation was more representative, he identified an unwelcome increase in scrutiny, contentiously claiming it was unprecedented:

I don't think there has been stronger or greater accountability than there is now. Some of that falls out of the relationship with this Government, who ... came into power in 2010 with not a great deal of regard for policing and we have had a difficult relationship at times.

CC Simon also suggested that the changes in oversight introduced by the Coalition Government might be politically convenient:

the Home Office too often say: 'Right, chief constables and PCCs – you sort it.' And I just think, you know, under the tripartite arrangements, there was a bit more accountability flowing the Home Office's way ... [The Home Office] ought to commit to that position and not just say it is down to chief constables or PCCs - who it will be easy to blame if things don't go well.

In the eyes of participants, the Home Office remained (for good or ill) influential and was also a source of anxiety and frustration, however, the check on police power provided by PCCs was a greater concern for participants. Participants noted that Home Office influence over them was increasingly exercised at arm's length, largely through HMIC, and it is HMIC's role that is considered next.

### **Her Majesty's Inspectorate of Constabulary, The Independent Police Complaints Commission, The College of Policing and The Code of Ethics**

Eight participants claimed HMIC was used by the Home Secretary to exert pressure on police forces, despite its theoretical independence. Twelve participants resented significant aspects of HMIC regulation and in some cases questioned HMIC's competence and begrudged their resources, as ACC Chris noted:

HMIC are – are significant players ... they have had a significantly increased resource. They have got more superintendents in HMIC than anywhere other than the Metropolitan now.

ACC Karen questioned HMIC's motivations and independence:

HMIC should be independent, but I don't see them as independent, I see them as being driven very much by the Home Secretary ... I often feel the inspections have a political agenda and not an agenda which is about making our communities safe.

CC Phil noted the influence of the Home Secretary over HMIC:

[the Home Secretary exerts influence] partly through the Inspectorate, because the Inspectorate are seeking to – to, I think, play a stronger role than they did in the past [and] have got more resources now than they ever had so do more inspections, spend more time with us and are therefore producing more reports. And, you know, it is not uncommon for – for there to be a missive arrive from the Home Secretary following an inspection.

Participants did not suggest that HMIC action improved how police power is used, indeed the pervading feeling was frustration, as CC Rachel noted:

I think HMIC feels like a bit of a – burden’s not quite the right word – irritation sounds a bit – but it feels – I don’t know – it feels like they have lost their way a bit. You know, they are meant to be the fierce advocates of the public. I don’t really see any connection between what they do and the public.

A blunter point about competence was made by CC John, ‘there is nobody in HMIC, apart from Mike Cunningham [a former HMI who had been a CC, he has now moved from HMIC to become Chief Executive of the College of Policing] who knows anything about policing.’ Although CC Simon struck a conciliatory, if qualified, note:

now we are into PEEL – and, you know, that is a more rounded, more comprehensive approach but actually still delivers quite an inspection burden on forces ... I would just like to see a little more balance and I would just like to see fewer emotive headlines in their inspection reports.

Overall the relationship between HMIC and chief officers did not seem to be constructive, despite participants’ emphasis on the importance of checks and balances when justifying the right to exercise power. The relationship with the IPCC seemed to be even worse. Six participants held the IPCC<sup>29</sup> in low regard and none spoke highly of it, although DCC James reflected on the benefit of referring contentious issues, ‘Taser – and we have tested that with the IPCC by referring matters to the IPCC to give us a view’. However, the common view was that the IPCC was ineffective, and its motivations were questioned:

CC Tom: Inept. Utterly inept ... The quality of their investigations are poor, the quality of their investigators are poor, I – I don’t get it at all.

CC Rachel: it still feels like they’re trying to establish their credentials in a, kind of, you know, by making press statements, by making announcements at public meetings and so on – which are more about establishing their credentials than actually about ‘is this the best way to be dealing with the circumstance?’

This thesis does not test if the concerns raised by participants reflect the quality of IPCC work, but it was clear that participants were frustrated by the IPCC and sometimes

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<sup>29</sup> The IPCC was replaced by the Independent Office for Police Conduct (IOPC) in January 2018 (Home Office, 2018), a consequence of the Police and Crime Act 2017. The IOPC has new powers to instigate investigations without a referral from police and to initiate misconduct action against chief officers, but whether the change amounts to much more than a new acronym is yet to be seen.

anxious about its actions. The College of Policing was a source of less anxiety for participants but its influence as a potential check and balance on police power seemed to be even more limited. The College of Policing aims to prevent crime, protect the public and secure public trust by developing knowledge about what works in policing, educating police and setting standards (CoP, 2018). Through Authorised Professional Practice the College potentially has a mechanism for influencing how police power is used. It could also play a legitimating function by promoting evidence-based practice. However, the College's role seemed peripheral to participants (with two exceptions) and when mentioned its relevance tended to be questioned and frustrations showed, as CC Tom illustrates:

ACPO goes, [ACPO] Cabinet gets scrapped – Cabinet's gone, it's been gone for two years' now and the theory is, it's replaced by the College Committee, which is chaired by Alex [Alex Marshall, now retired chief executive of CoP] ... Heads of the business areas [CCs with national lead responsibilities] go onto that committee, along with the Federation, the unions, academics, Uncle Tom Cobbley and all ... and then the view in the College is: 'Let's get shot of some of these chiefs because there are too many chiefs on this. They dominated it'. That's the view – well, forgive me – we're the fucking police, aren't we?

ACC Patrick also saw the College as peripheral:

they do their Authorised Professional Practice ... they're endorsing the national guidance that used to be endorsed by Chief Constable's Council. They're not central to my thinking at all.

The Police Code of Ethics (College of Policing, 2014), although not developed in isolation from the wider police service, was one of the early products of the College of Policing. Four participants saw the Code as useful when making judgments about the proportionate use of police power, CC Alan's comment was typical:

I think it is very important that we use the process and the tools at our disposal. So, you know, the national intelligence model and the national decision-making model [an appendix to The Code of Ethics] are central to that.

However, four participants felt that the Code of Ethics did little to improve how police power is used, CC Tom's view was clear:

The Code of Ethics is a statement of the blindingly bloody obvious and if you look at the ten principles, nine of them are disciplinary offences if you don't do them anyway.

Other participants were ambivalent, and the Code of Ethics did not appear to contribute to their understanding of the right of police to exercise power, as typified by CC Rachel's response:

Code of Ethics – yes, but if you ask us what's in it, we are probably a bit hazy about that. But we'll have some ethical language to revert to.

The College of Policing seemed to have very limited influence over participants' understandings of the right to exercise power and added little or no value as a check on power. The College of Policing was a product of the police reforms introduced by the Coalition Government in 2011, these reforms also modified the concept of operational independence and the influence of this concept on chief officers' thinking is explored next.

### **A 'very blurry' and 'grey thing'**

Participants were asked about operational independence to establish how it influenced their understandings of the right to exercise power. Jefferson and Grimshaw (1984) argued constabulary independence sheltered chief constables from scrutiny. Since then constabulary independence has diminished (as shown in chapter two) and is now referred to as operational independence (Home Office, 2011a). Section 79 of the Police Reform and Social Responsibility Act 2011 required the Secretary of State to issue a protocol to guide the relationship between chief constables and PCCs. The Policing Protocol Order (Home Office, 2011(a), a statutory instrument) repeatedly refers to operational independence but does not define it, indeed it notes that it is fluid and context driven. A reframed notion of operational independence, which set out more clearly which decisions rest with chief officers and which with politicians, might act as a check on the use of police power and on politically partisan overreach, but operational independence is not well-defined.

The views of participants support the case that operational independence has diminished. Indeed, some participants implicitly (in one case directly) suggested that

Government target driven management (discussed in chapter seven) undermined operational independence. However, participants saw operational independence as a fluid concept and all reported that they sought to pragmatically manage relationships with those holding them to account and negotiated any tensions over operational independence. None described operational independence in terms that could be interpreted as a shield against scrutiny. CC Alan claimed that in the early phase of the New Labour Government:

there was an element of almost direct State control of police – well, not almost, there was, wasn't there? Effective direct control of police – they set the plan, they would provide funding for particular things ... knife crime is a really good example.

However, CC Alan did not think the current arrangements signalled a rebirth of operational independence:

I think the Policing Protocol means different things to whoever reads it. So, I mean, it makes it very clear that operational independence is chief constables' operational independence. It also makes very clear that if somebody else doesn't like them, they can fire them. So, consequently, it's – I think that operational independence can be fettered by the very nature that the Policing Protocol is written, and I feel that there is potential for us to find ourselves in a Nottingham City Police scenario<sup>30</sup>.

ACC Bill saw the power of chief officers as fettered by the financial control of PCCs, 'You can't be operationally independent without any money. So, there has, at some stage, to be some form of negotiation'. Whilst CC Greg highlighted the power that could be exercised over chiefs by PCCs' ability to appoint and dismiss:

it's really hard saying to the person with the headline 'I'm going to hire and fire you': 'Back off, I'm not going to do it'. And of course, you get all of these election manifestos – 'I'm going to put 100 extra police officers on the

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<sup>30</sup> A dispute between the CC of Nottingham City Police and his Watch Committee in 1958, arising from the Committee seeking to intervene in an investigation, leading to the CC's removal and subsequent reinstatement (Stallion and Wall, 1999: 20).

neighbourhood streets'. Not your gift – that is an operational decision. But quite a brave Chief to push back.

However, CC Rachel felt limited lines that could be drawn, and she inferred a distinction between a narrow sphere area of operational independence, which chief officers hold dear and where legal precedent gives them protection (notably *R. v. Metropolitan Police, ex parte Blackburn* [Denning, 1968]); and a much broader area of activity where the administrative and legal influence of PCCs and the Home Office has eroded operational independence:

at one extreme, do politicians tell chief constables, or anyone else, who should or shouldn't be arrested? You know – what – you know, I suppose that is the most extreme end – whether crimes should or shouldn't be investigated. And in crude terms, I don't think that's been undermined in an explicit way because I – I can't think of a chief in the Country who, if they were given a direct instruction like that, wouldn't baulk at it.

Yet overall participants were not precious about operational independence:

DCC Anthony: the more you try and define stuff, the more ... [it] is a mind-numbing way of trying to do business ... I'm quite comfortable with the fact it's grey.

ACC Patrick: It is quite a grey thing, operational independence ... the moment you start involving people in your operational activities, be it as independent advisers, or briefing politicians about operational activity you are undertaking, you are effectively giving them – well, if you are not giving them a say, you are giving them the chance to ponder it.

Perhaps chief officers should be more concerned, particularly if PCCs behave in ways that warrant Loader's (2002: 137) warning about the potential impact of democratising policing on civil liberties<sup>31</sup>. However, CC Greg suggested that PCCs and other politicians should be cautious about operational interference, as it can change where the buck stops, 'you [PCC] can come and look at anything you like but don't touch. If you

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<sup>31</sup> An example of this risk is arguably illustrated by the election pledges of the successful independent candidate for PCC in Surrey in 2012, Hurley (2012)

touch anything, do not hold me to account'. Although CC Trudy noted that this negotiation was not easy:

it is very blurry, I think, particularly with PCCs where you get this, you know: 'I want 250 million PCSOs' or whatever. I think it's quite a difficult one which you work your way through on relationship.

Navigating operational independence is complicated without a map, as DCC Anthony noted, 'I have absolutely no idea what it means'. However, all participants struck a pragmatic note and CC John's hypothetical illustration was typical:

On some other things, if they (PCC) came in and said: 'I want to increase our PCSOs by 100', I'd have to say: 'Well, okay, if we are going to do that, here's the consequences, that's the risk, here's the other things' and we would negotiate a sensible way forward. There would never be a line in the sand ... It's so grey and if you rely on operational independence which is ill-defined, then it's a flawed approach and it just – you'll just end up in conflict with your police and crime commissioner.

Underlying the pragmatism were anxieties about legitimacy, status and job security, these worries are explored next.

### **'A really, really dark place'**

Fifteen of the sixteen participants raised concerns about their status or job security, partly arising from their perceptions about the nature of the checks and balances they were subject to, and this has implications for how they understand and use power. This was reflected in the interviews and captured in the research diary, looking at how the interviews unfolded, in terms of tone and in comments during, before and after the audio-recording of the interview. Some of this anxiety was shown by CC John:

HMIC has doubled. IPCC has doubled. Home Office has become more distant. And then crime commissioners are now political. So, all of that has created added tensions, I think, for chief constables. And the other one for me is around – I've had more complaints about me in the last year than I've had in the last XX



years [the rest of his career]. Most of the people have never met me and will never meet me. But it takes its toll.

Job security was a significant concern for some participants and was partly based on awareness of colleagues leaving policing prematurely. In 1985 the average length of service in the rank of chief constable was 5 years, it fell to 4.4 years in 1990, 3.8 years in 2000 and 3 years in January 2017 (Brain, 2017) and has fallen since with the retirement of long serving chiefs during 2017 (Sir Bernard Hogan-Howe, Steve Finnigan, Sir Jon Murphy and Mick Creedon). This has continued with six chief constables announcing their retirements between 1<sup>st</sup> April and 9<sup>th</sup> May 2018 (Weinfass, 2018). A partial cause was the introduction of fixed term appointments for chief constables, but this appears to have been accelerated by the introduction of PCCs and chief constables either not seeking, or not being granted, extensions to their appointments (Brain, 2017). These reduced tenures may also reflect broader trends in employment.

ACC Karen commented, ‘any chief constable that stands up to a PCC and says: “wind your neck in, this is operational policing” is immediately vulnerable because they can be hired and fired by that PCC.’ Whilst CC Alan felt that, ‘I think we sometimes get a bit histrionic in this country about if – if something went wrong, someone needs to be fired.’ CC Greg made a similar point:

one of my huge issues and concerns in policing at the moment is the ‘heads must roll’ mentality and we will hold individuals to account. It stifles people from being allowed to take proportionate risk and creates a sense of fear.

CC Alan attributed some of these anxieties to recent reforms and inferred that the ability to use power without fear or favour might be compromised:

the potential that chiefs become wedded to the commissioners and you get a more, almost American-style system where a mayor is booted out of office and then a chief goes as well. And I think that is not great – that starts to politicise the police by osmosis.

Deputy and assistant chief constables share the exposure to scrutiny with chief constables, although they are slightly distanced from the direct threat posed by PCCs to chief constables. However, they no longer have the potential protection from their chief

constable that could previously be provided by a police authority (which had the power to hire and fire ACCs and DCCs, a capacity that now rests with chief constables). Deputies aspiring to be chiefs may be particularly exposed, to their chief constables and PCCs, as CC Alan proposed:

I've always felt that deputies and ACCs were more vulnerable [than CCs], knowing some of the chiefs, I've met. So – and actually, if a chief is under threat what happens next? So, I have always felt – and I think that that could become a more menacing relationship in future.

CC Greg also noted the precarious position of DCCs, 'I think, possibly the most vulnerable beast in policing today is the deputy chief constable aspiring to be the chief.' An argument expanded on by DCC Susan:

temporary chiefs' ranks and you think to yourself: well, that's tricky and you aren't going to press somebody, you aren't going to particularly challenge somebody when they are going to select you are you – that dynamic is different.

Chief officers used to have the potential for guidance and support from HMIC but the role of HMIC has changed and HMIs are no longer former chief constables. It can be argued that it is healthy for there to be distance between the inspector and the inspected, nonetheless these changes may have increased chief officers' feelings of isolation, as ACC Bill observed:

the role of HMIC was, I think, very much supportive and advisory role and to become adversarial – I'm not 100 per cent sure has been, actually, such a good move, because quite often forces who might be underperforming have suddenly felt very, very vulnerable ... it becomes a really, really dark place for some people.

DCC Anthony identified the IPCC as another source of anxiety, 'something like 20 per cent of all chief officers, I think, is the figure quoted at any given time are subject to some sort of enquiry by the IPCC.' He also highlighted the risk this might pose for the public, 'it makes some people very risk averse – can paralyse organisations or individuals.'

CC Greg noted the impact that perceptions of precariousness might have on decisions to use power:

when it comes to power, there's something about protecting that office [of chief constable]. The less often that office wields power, the safer it is because every time you wield your power, you make yourself vulnerable to challenge.

CC John described how exposed he felt:

I had a tortuous first year ... when you are in the middle, it certainly feels a lonely place. You know, that journey, when you are in the middle and the performance indicators don't look good and people are getting worried and the perfect storm because everyone is on your case, there is a real temptation to doubt your own personal judgement.

CC Trudy also revealed the strain:

[I have] been a chief since XXXX. It feels like 400 years to be honest ... so you're making different – different, kind of, calls on the power you have got because of some of that pressure to be seen to be accountable to respond to what's a public view I suppose. So, it does – I'd be – I'd be lying if I said it doesn't affect you in that sense.

CC Simon felt that heightened scrutiny and precariousness was a relatively new phenomenon:

at times it has felt as if too often we are chided like children and not trusted but I suppose you have got to earn that trust. But that's been part of a relentless focus on the service that has been picked up by the media and certainly chief officers – we're under more scrutiny now than we have ever been under.

Whether scrutiny is greater than it has ever been is debatable. Following public disorder in 1981 and 1985 scrutiny was intense; illustrated by clashes between police authorities and chief constables in Merseyside (Simey, 1988) and Greater Manchester (McLaughlin, 2007). Chief officers were also in unwanted limelight in the late 1950s, following scandals that led to the instigation of the Royal Commission on Policing in 1960 (Stallion and Wall, 1999: 20). However, most participants suggested that contemporary scrutiny is disproportionate, and this contributed to their feelings of precariousness. The scrutiny that chief officers reported and anxieties they displayed may inhibit, for good or ill, their capacity, or will, to use power. This will now be

reviewed alongside the other aspects of law and associated checks and balances that influenced participants' understandings of the right of police to exercise power.

## **Conclusion**

All participants used arguments based in law to explain the right of police to exercise power. It was claimed that laws helped ensure that power was used proportionately, and the democratic mandate of legislators bestowed legitimacy on the law and on police when exercising power within the law. Participants also recognised that legality and legitimacy were not synonymous and, therefore, whilst law was a necessary element of the right to exercise power it was not sufficient. Lawful use of power was seen in conjunction with consensual policing, as participants observed that enforcement of laws that were widely resented, or other imprudent use of legal power, could undermine consent and the right to exercise power. Therefore, discretion in enforcing laws remains an inescapable aspect of police behaviour (Wilson, 1978) and its appropriate application is arguably crucial when establishing a right to exercise power.

Participants also stressed the role of checks and balances, established by law, in explaining the right of police to exercise power. The importance of these mechanisms, it was suggested, lay in providing parameters for the use of power and in constraining disproportionate use of power. Participants emphasised the democratic mandate of PCCs and legislators, which could be used to justify the use of police power in the service of legitimate objectives set by those giving direction to chief officers.

However, participants were not satisfied that the checks and balances were consistently fair or effective. The competence and motives of the IPCC and HMIC were questioned by many participants, although HMIC was seen (for good or ill) as influential. The College of Policing and Police Code of Ethics appeared to have little impact on how participants used power or understood the right to exercise it. In contrast the Home Office, although not as central to chief officers thinking as it had been before the reforms introduced by the Coalition Government, remained influential, in part by using HMIC as a proxy. However, many participants expressed frustration with the Home Office and pointed to the illiberal consequences of some quantitative performance agendas that had been driven by the Home Office. PCCs were reported to have the greatest influence on how chief officers used their power and, whilst their democratic mandate was generally

recognised, some participants highlighted the delegitimising potential of low electoral turnouts and noted the risk of PCCs setting objectives that may have adverse implications for civil liberties.

Participants adopted pragmatic stances when working with PCCs. However, operational independence appeared to have been further diminished by PCCs ability to hire and fire chief constables and by PCCs control of finances. Despite the apparent pragmatism displayed by participants there were clear indications that many were concerned about their job security and status. Several participants voiced worries about growing risk aversion and unduly cautious approaches to the use of power, induced by the perceptions of precariousness that had developed. This reflects warnings given by former HMCICs Sir Ronnie Flannagan (2008) and Sir Dennis O'Connor (House of Commons, 2011).

Caless (2011) found that an unhealthy relationship appeared to have developed between chief police officers and those holding them to account. Whilst the level of apparent anger that some of Caless' cohort displayed did not come through in the responses of participants in this research, most were anxious, frustrated at times, and felt their positions were precarious; this has implications for how power is used. It can be argued that democratic control of police is desirable (Loader and Mulcahy, 2003), but this needs to be balanced with respect for civil liberties and social, as well as criminal, justice (Loader, 2014: 48 and Reiner, 2016). This requires power to be used fairly (Sunshine and Taylor, 2012) for 'them' as well as for an imagined law-abiding 'us'. When chief officers become too concerned with threats to their status and careers, and fearful about the organisations they lead, their focus on wider police duties may be lost (Brown, 2007). To prevent this chief police officers arguably need the confidence to use the aging armour provided by the concept of operational independence and should use power to protect people, including those who do have little power ('them'), rather than resort to a Nuremberg defence to explain their failure to defend people or to justify the disproportionate use of power against 'them'.

Participants' explanations of the right of police to exercise power employ justifications about protecting people (particularly the vulnerable), policing by consent, and the law and associated checks and balances. The last three chapters have addressed these in turn and the discussions demonstrate that these three broad understandings overlap and are

sometimes in tension with each other. These understandings will now be reviewed in a final chapter that examines the findings and considers their implications.

## **Chapter Nine**

### **Issues and Implications:**

#### **Confused, Conflicted and Convenient**

##### **Introduction**

To put this closing discussion into context the thesis is reviewed, and then an interpretation of the understandings that an archetypal contemporary chief police officer might hold about the right of police to exercise power is presented. The implications of this research for the future and current state of policing are then considered. Areas for future research are also discussed before the thesis is concluded.

##### **Overview**

The introductory chapter provided context for this thesis and identified a research gap. In chapter two literature examining legitimacy and the right to exercise power was reviewed and in chapter three previous research into chief police officers in England and Wales was examined. This helped frame the critical realist research that followed. In chapter four the methodology and methods adopted were discussed. The intention was not simply to provide an opportunity for participants to ‘express their own views’ and then report them, an approach taken by Roycroft (2016: vii), rather the data was contextualised and interpreted to gain knowledge about why things were said and what they might mean. In chapters five to eight the sixteen semi-structured qualitative interviews conducted with chief police officers in England and Wales were analysed. In chapter five contextual information about participants’ social, educational and career backgrounds and motivations for joining the police was assessed and a potential power/service paradox was revealed, in addition themes relating to change and complexity were identified and considered. This chapter acted as a bridge to detailed analysis of the three broad and complementary, but sometimes contradictory, accounts of the right to exercise power that emerged from the data. In chapter six understandings based on protecting people, particularly the most vulnerable, were analysed. Chapter seven turned to justifications for the use of power based on policing

by consent and in chapter eight explanations located in law and associated checks and balances were assessed.

In seeking an apt conclusion inspiration was found in Reiner's *Chief Constables* (1991). Reiner used Weberian ideal types (Weber, 1994:84) or 'models of logically possible permutations, which are not encountered in the real world' (Reiner, 1991: 303-304) as a device to display how his chief constables approached and understood policing and to draw out key themes. As discussed in chapter five it was not possible to identify a range of types in the way that Reiner did, which may be due to the socialisation processes that contemporary chief officers experience, which seems to produce a set of more consistent (or bland) views than those Reiner (1991) encountered. However, a picture can be painted of how an archetypal contemporary chief officer understands the right of police to exercise power, recognising that no such individual exists and agreeing with Cales's (2011) rejection of the suggestion that contemporary chief officers are clones. Collectively participants voiced understandings of the right of police to exercise power which, it will be demonstrated, can be construed as confused, conflicted and convenient.

### **Confused**

Accounts of a right of police to exercise power based on a duty to protect people, particularly the most vulnerable, were confused by the ambiguity of vulnerability. This may reflect wider discourses of vulnerability (Brown, 2017). This lack of clarity was exacerbated by participants' concerns about the efficacy of threat, harm and risk assessments used to identify vulnerability. Some participants argued that these assessments were subjective and driven not only by a desire to protect people but also by perceived threats to individual police officers and staff, including chief officers, and to the police organisation. Vulnerability priorities also appeared to be related to participants' anxieties about police legitimacy arising from previous police failures and scandals, such as inadequate policing of child sexual exploitation. Decisions about using power to protect the vulnerable were complicated and confused by persistent worries about managing competing demands, which was arguably exacerbated by austerity. With this muddle comes the possibility that vulnerability is little more than 'a sort of collective noun to describe a problem that that we have got in resourcing'



(ACC Chris). Together these factors paint a perplexing picture of what is meant by protecting the most vulnerable and it is also not clear what status broader traditional police duties to keep the peace and protect people and property retain (Emsley, 2014 and Pratt, 2017).

Discussion of consensual policing was confused by the broad and ‘hazy’ (CC Rachel) nature of the concept, which encompassed minimal coercion, acting within the law, shared values and trust and an appeal to the founding myths of British policing. These myths were broadly accepted by participants, as was demonstrated by the frequency of references to Peelian Principles, reflecting the views of many earlier chief officers. Confusion extended to how consent should be gauged and built. The measures described to gauge consent were not generally primarily designed to identify consent and provided, at best, partial and proxy indicators of consent. Similarly, when it came to building consent a coherent view was absent, although there was general agreement that conversations with citizens, often framed as a reified public, was critical. However, the dialogue described appeared ad hoc and inadequate, particularly when it came to conversations with people who tend to be policed rather than protected (Loader, 1996). This resonates with Vitale’s (2017: 6% into book) warning from the USA that ‘the view of renters, youth, homeless people, immigrants and the most socially marginalized are rarely represented’. Participants also stressed the role of neighbourhood officers in building and gauging consent but whilst the field work was being conducted, and since, the numbers of officers engaged in this form of policing have reduced and HMIC (2017) expressed concern about the future of local policing. The Police Foundation (Higgins, 2018) also found that neighbourhood policing continues to be eroded, with traditional priorities of community engagement, visibility, intelligence gathering, and local knowledge being displaced by an emphasis on vulnerability and responding to incidents. In part this can be explained by budget reductions, but it is also a choice made by chief officers, PCCs and the Home Office. It would be healthier if ‘taken - for – granted – conventions’ (Harre and Bhaskar, 2001: 28) about consensual policing were rigorously interrogated (Murray and Harkin, 2017), particularly by those who lead the police service. If these assumptions are not adequately questioned, then the persistent confusion is likely to contribute to complacency and to chief officers continuing to listen to the voices of the ‘great and the good’ and ‘deserving victims’ (‘us’). Consequently, the voice of ‘the policed’, or

‘them’ will be muffled, and it will remain difficult to distinguish active consent from ‘dull compulsion’ (Carrabine, 2004).

Explanations of the right of police to use power based in law and associated checks and balances were confused, particularly when operational independence was addressed. Operational independence was repeatedly described as ‘grey’; although participants reported a pragmatic approach to negotiating parameters with PCCs. This confusion arguably reflects how operational independence has evolved from constabulary independence and is now described in the Policing Protocol Order, which is unclear and accepts that the concept is ‘fluid’ (Home Office, 2011a). Participants were not, generally, unduly exercised by the ambiguity of operational independence, although they were anxious about the fairness and level of scrutiny they perceived they were under. However, perhaps they should be more concerned given the lack of shelter a diminished and ‘blurry’ (ACC Patrick) version of operational independence seems to provide for chief officers, and arguably by extension for the public, from the potential predations of partisan politics. Partisan interests had been a key concern for the Royal Commission on the Police (1962) and informed the tri-partite structure that flowed from the Police Act 1964; albeit there is a debate about the border between legitimate democratic control and accountability and biased governance of policing that threatens civil liberties (Jefferson and Grimshaw, 1984 can be contrasted with Mark 1977: 34 - 43). This confused and potentially precarious position for chief officers is arguably exacerbated by the power of PCCs to set a policing plan (no longer a collaborative venture with chief constables, as it had been with police authorities), control finances and hire and fire chiefs. This may result in a gate that chief officers lack the confidence to guard, leaving an opening through which some politicians might drive objectives that lead to police encroaching on civil liberties (Loader, 2002) whilst turning a deaf ear to the voice of ‘them’.

## **Conflicted**

In chapter five participants’ motives for joining the police were explored. They had been called to policing by public service and a predilection for excitement, which could be associated with the authority and power involved in policing. These twin attractions, whilst not mutually exclusive, pose a potential paradox for understandings

chief officers hold about the right to exercise power. As CC Rachel observed, policing is ‘a really attractive career if you are a bully’, and less malignly (and probably desirably given their roles inevitably involve coercion and control) most participants indicated they did not usually shy from the exercise of power, although their stories suggested they were cautious about its use. This well-educated elite consistently voiced liberal views that emphasised the importance of public service, human rights and proportionate use of power. Yet, participants grappled with tensions between the role of police as a symbolic and practical manifestation of the coercive and controlling power of the State (a power that can arguably be used for good or ill), and traditional legitimating accounts of policing by consent. This emerged from the stories told in chapter seven, which tended to obscure the coercive functions of police and favour a benign and consensual vision of policing. Historically this was probably a deliberate legitimating device (Emsley, 2014), starting with Rowan and Mayne’s Principle Objects of Police in 1829 (The Times, 25 September 1829, cited by Emsley, 2014: 12, and Metropolitan Police, 1985) and repeatedly refreshed, for example in the rebranding of the Metropolitan Police as a service, rather than a force, following the Wolff Olins report (1988). Contemporary chief officers continue this consensual tradition but are unable to escape the difficulty of balancing and explaining the tension between coercion and consensus, framed by Van Dijk, Hoogenwonig and Punch (2015) as a false dichotomy of control and consensus. Arguably this conflict can only be resolved if chief officers acknowledge and manage the coercive and controlling requirements of policing, rather than concealing them in a consensual haze.

Tales of withdrawn consent provided examples of the conflict between narratives of protecting the vulnerable and consensual policing. This conflict can be seen in the priority many local people put on policing the roads contrasted with its striking absence in discussions of vulnerability and the low priority put on it by PCCs and chief constables (Wells, 2016) and by the Home Office, as shown in its absence from the Strategic Policing Requirement (Home Office, 2015). Conflicts between protection and consent are also illustrated by contemporary concerns about the policing of fracking and windfarms, which some participants felt threatened consent, with the sympathies of local people potentially favouring protesters, whilst the companies involved in fracking and windfarms are protected. This also demonstrates a conflict within the narrative of protecting the vulnerable, which was frequently cited as a

primary policing purpose, yet the practice of policing also entails protection of the powerful, including companies involved in fracking and windfarms.

A conflict between policing by consent and a justification of a right to exercise power founded on the law was illustrated by the anxieties expressed about the damage to legitimacy caused by the, arguably largely lawful but sometimes disproportionate, use of power in the policing of disorder and industrial disputes, notably the disorders in 1981 and 1985 and the miners' strike of 1984 to 1985. More recent concerns about the conflict between consent and the law were illuminated by stories about the adverse impacts of quantitative performance management, notably in disproportionate, but usually legal, use of power in the pursuit of centrally determined objectives. Examples included the street crime initiative and the criminalisation of young people to achieve detection targets. These instances of Government driven initiatives highlight participants anxieties about police as agents of state power in conflict with the interests of citizens.

In discussions of justifications of the right to exercise power based in law and associated checks and balances there was a conflict between, the consistent claim that checks and balances provide transparency and promote proportionate use of power, and the clear worries voiced by participants about, what they perceived as, the disproportionate intrusion of the checks, and their concerns around the competence and agendas of the scrutineers. These accounts echo Caless' (2011: 233) finding that, 'chief officers dislike oversight and have low opinions of those tasked to oversee them'. This research concurs with Caless. There was a theoretical acceptance of scrutiny but exasperation with its practice. This thesis cannot judge whether scrutiny is disproportionate and unfair, but the relationship described appears unhealthy, reflecting conflicts, rather than constructive conversations, between chief officers and those responsible for police oversight.

## **Convenient**

Perhaps the greatest concern for citizens raised by this research is to be found in the convenience of some of the justifications of the right of police to exercise power that were voiced by participants. The convenience of these arguments was, partly, fuelled by the confusion found in the understandings, notably in the vague discourse of

vulnerability and in the conceptual haze of consensual policing. Convenience was also apparent in recurring references to change and complexity. The conflicted nature of the understandings also informed the convenience of the explanations. This was notable in relation to tensions between narratives of coercion and consensus. These stories conveniently concealed the inevitability of coercion by constructing a coercive ‘then’, juxtaposed with a more consensual ‘now’. Such tales also disguised and distanced examples of withdrawn consent. These concerns are now addressed in more detail.

Policing has probably always been complicated but, as discussed in chapter five, participants in this research argued that accelerating change and complexity meant that the way power is used needs to evolve. These accounts are arguably part of a convenient legitimating narrative of change and complexity, which assists chief officers in claiming a privileged and expert status when making decisions about the use of power, decisions which may be difficult for those without policing expertise to challenge (Day and Klein, 1987).

The obscure discourse of vulnerability also provided an opportunity for chief officers to assert a privileged standpoint. However, protecting the most vulnerable did not feature as a key purpose for policing in the *Review of Policing* (Flannagan, 2008) or in literature looking at chief officers before 2016. Yet discussion of vulnerability now abounds in policing (HMIC, 2015a and College of Policing, 2016). As discussed in chapter six, vulnerability is a conveniently vague concept that can be used as a legitimating clothes rack, from which chief officers, PCCs and the Home Office can pluck garments to dress up their choices about the exercise of power, to make them appear acceptable to most people. In doing so they can also call on convenient ‘folk devil[s]’ (Wells, 2016: 278), such as sexual predators, to garner support for the choices made. Yet some groups and individuals that appear vulnerable, for example those at higher risk of being killed or seriously injured on the roads (World Health Organization, 2013) and victims of burglary or anti-social behaviour (Pratt, 2017) rarely feature in discussions of vulnerability and in consequence the resources put into policing in these areas and the priority given to them may decline, and in the case of roads policing (Wells, 2016) and neighbourhood policing (HMIC, 2017 and Higgins, 2018) has. These decisions may partly be responses to reduced budgets, but they are still choices, other options could have been pursued. The disguises that the

legitimising clothes rack of vulnerability and associated threat, harm and risk assessments provide may be used to justify rationing decisions as police budgets decline; although some participants felt that such assessments were subjective and potentially divisive. Hence, conceptualisations of vulnerability can be construed as having conveniently contributed to concealing partial withdrawals from traditional policing priorities, such as burglary, vehicle crime and anti-social behaviour, which become risks that the State expects people to manage themselves (Pratt, 2017). Meanwhile, issues that the powerful consider should be matters for the police, such as terrorism, are given elevated priority (ibid.). However, failing to direct police power to deal with issues that concern large sections of society, or ‘democratic audiences’ (Jefferson and Grimshaw, 1984: 64) may indicate a misalignment of values and priorities between those with power and subordinates and this can jeopardise legitimacy and the supposed right to exercise power (Beetham, 1991).

Discussions of withdrawn consent in chapter seven showed chief officers’ broadly shared construction of a consensual ‘now’ being contrasted with a more coercive ‘then’. This construction might be viewed as convenient in drawing attention away from contemporary challenges to the right of police to use power, such as the recent delegitimising behaviour of some chief officers noted in chapter five (including CC Sean Price, Commander Ali Dizae and CC Nick Gargan, all of whom were forced to leave the police due to their misconduct). This construction also conveniently distances chief officers who wield power now from predecessors who are portrayed as more prone to coercion. More widely, accounts of policing by consent, infused with policing myths and invoking dubious narratives of societal consensus (Emsley, 2014), conveniently cloak the inevitable use of coercive power by police when maintaining order.

All participants recognised that legitimacy and legality were different and that there could be a conflict between legal and legitimate use of police power. This emerged in tales of withdrawn consent, which included examples of legal use of police powers, which participants judged were inappropriate and ran counter to the wishes of large numbers of people, particularly when discussing the policing of disorder, industrial disputes and the adverse impacts of new public management and the pursuit of targets. Again, a convenient account of a coercive ‘then’ and a consensual ‘now’ seemed to be invoked. It was notable that the policing of the 1981 and 1985 disorders was

constructed as a delegitimizing narrative, whilst the 2011 disorders received little comment and when they did it was as a contrast with 1981 and 1985. Yet, most participants were senior police officers when some of these delegitimizing uses of police power occurred (particularly in relation to the tales of the negative consequences of blunt quantitative performance management regimes) and it was not clear what their involvement in directing or mitigating such uses of power was<sup>32</sup>.

For these apparent errors to be avoided in the future the ‘taken – for - granted - convention’ (Harre and Bhaskar, 2001: 28) that the police have the right to exercise power needs to be challenged. Further, the stories learned, lived and told about this supposed right need to be developed or even transformed, rather than just reproduced. Arguably this transformation can start by facing the facets of policing that necessarily involve conflict, coercion and control. As a starting point for such a discussion the implications of this research for the current and future state of policing are now considered.

### **Implications for the current and future state of policing**

This section identifies the implications of the findings of this thesis for the ‘public police’ (Manning, 2014: 30) in England and Wales. This consideration includes the consequences that the research findings may have for democratic policing, which should pay more attention to the needs and liberties of citizens than it does to the requirements of regimes (Mawby, 1999: 9).

The most striking finding that emerged from chapter five was that, despite participants’ claims about the escalating complexity of decision making, they reported that they spent little time considering one of the most fundamental aspects of police authority, namely power and how it is used. Further, there appear to be few structured opportunities for chief police officers to reflect on the use of power and the right to exercise it and little encouragement for them to do so. This applied to their training and socialisation (apart from narrow specialist command training, which incorporates

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<sup>32</sup> I recognise that I was also a chief officer for more than eight years and in senior rank for much longer, and therefore had the power to mitigate some of these behaviours. I hope I did but wonder whether I did as much as I should have and indeed how much I contributed, intentionally or not, to disproportionate, albeit legal, uses of police power.

some legal requirements for the use of power) and to their interactions with each other and with those responsible for their oversight. HMIC (now HMICFRS) had, prior to 2009, provided a mentoring function for chief officers, which had the potential to support such reflection. However, HMIC's increasingly formulaic approach to being 'fierce advocates of the public interest' (Brain, 2010: 424 – 425) has arguably removed an opportunity to discuss and think carefully about the use of power. The College of Policing also has the potential to support reflection on the use of power but was peripheral to participants' thinking. The Strategic Command Course (SCC) is another obvious vehicle for structured discussions about the right to use of power. However, far from encouraging such considerations, the impression given was that the SCC tends to entrench elitism and risks escalating feelings of entitlement amongst a group of middle-class and well-educated chief officers who are far removed from Reiner's (1991) working-class elite. No data emerged suggesting that PCCs encouraged careful reflection on the use of police power, indeed the populist agendas of some PCCs (Lister and Rowe, 2015) may militate against such considered contemplation. More opportunities for structured reflection might be welcomed by chief officers, improve their decisions and hence benefit the citizens they should serve. Whilst detailed discussion of outlooks inspired by Gramsci, Foucault or Habermas seem unlikely to be included in the syllabus of the Strategic Command Course, opportunities for structured discussions and personal reflection that consider critical perspectives may encourage more proportionate and effective use of power.

Chapter six was primarily concerned with a new discourse of protecting the vulnerable that emerged from the conversations with participants. They were confused about how decisions are made around who is vulnerable and about how police power should be used to protect them. Indeed, participants' thinking about vulnerability was obscured by an arguably convenient haze of ambiguity. This was linked to discussions of policing purpose, which has undergone a drift, from broad duties to keep the peace and protect life and property, to an equally ill-defined but seemingly narrower obligation to prioritise the protection of the vulnerable. This shift has occurred without the meaningful public debate about policing purpose and priorities that Flannagan (2008) recommended. If this drift continues without meaningful conversations with democratic audiences (Jefferson and Grimshaw, 1984: 64), there is a risk that swathes of citizens may feel that their priorities for the use of police power are being ignored and their



consent (if they currently consent) to the exercise of police power could be withdrawn. Therefore, a public debate about policing purpose and priorities is desirable and conceptualisations of the policing of vulnerability should be critically interrogated.

Chapter seven was concerned with the concept of policing by consent, which was used by all participants to explain the right of police to exercise power. Yet their accounts revealed a concept that was so broad and loosely drawn that it could be interpreted as convenient legitimating camouflage, which deploys dubious broader societal discourses of consensus and draws on policing myths (Emsley, 2014) to disguise the inevitability of coercion in policing. However, there were elements of commonality in participants' accounts, notably they all identified conversations with the public, or publics, as being critical to gauging and building consent to the use of police power; although the dialogues described seemed to be ad hoc and inadequate. This was particularly so for conversations with those over whom power is most frequently exercised ('them'). These conversations are not just a matter for chief police officers, the voices of 'them' and of broader 'democratic audiences' (Jefferson and Grimshaw, 1984: 64) need to be heard by PCCs and the Home Office, a failure to do so endangers police legitimacy.

This chapter also examined tales of withdrawn consent and revealed a convenient construction of a coercive 'then' and a more 'consensual' now. This should concern citizens, as it may deflect attention from contemporary uses and abuses of police power, which may serve the interests of the powerful at the expense of those with less influence. Some participants noted that the policing of fracking and windfarms might fall into such a category and some also expressed concerns about the behaviour of some recent chief police officers who had misused their positions. However, overall participants accepted and deployed a narrative of consensual policing. These assumptions about policing by consent need to be challenged and questioned to ensure that proportionate police power is used in the interests of all citizens, not just in the interests of 'us'. The need for such challenge is arguably amplified by the potential risks posed by PCCs pursuing populist agendas to garner votes (Lister and Rowe, 2015). This may lead to PCCs (and other politicians) pressurising chief officers to use disproportionate police power against a conveniently constructed distanced, different and dangerous 'them'.

In chapter eight understandings of a right to exercise power based on law and associated checks and balances were examined. In these discussions the concept of operational independence was scrutinised. Participants reported that the concept was grey and poorly defined. Operational independence has diminished substantially since the Police Act, 1964 and *R. v. Metropolitan Police, ex parte Blackburn* (Denning, 1968). Whilst the Policing Protocol Order (Home Office, 2011a) draws attention to the importance of operational independence it fails to define it. This ambiguity about, and erosion, of operational independence needs to be seen in the context of anxieties expressed by chief officers, about the checks and balances on the use of police power and concerning their status and security in post. This research is not alone in finding an apparently fractured relationship between chief police officers and those responsible for their oversight, Caless (2011) and Roycroft (2016) reported similar worries. However, this thesis provides a particularly vivid insight into the levels of anxiety felt by many contemporary chief officers. Some were, as ACC Bill stated, in a ‘really, really dark place’. Yet not all participants were in this position and some had forged pragmatic working relationships with those responsible for police oversight, even if they were concerned that this might not persist.

There is a risk that chief officers who feel precarious will become increasingly cautious, indeed risk averse, in their use of power. Whilst caution is arguably preferable to cavalier use of power, in surplus it can be debilitating. Failures to use power may be as damaging as excessive use of power. Chief officers also need the confidence to use their power, and what remains of the fragile armour provided by operational independence, to resist partisan policing objectives being imposed, a concern addressed by the Final Report of the Royal Commission on the Police (1962). Such partisan, and potentially populist, objectives may encroach on civil liberties (Loader, 2002) and fail to recognise the interests of ‘them’. Relationships between chief officers and those responsible for their oversight should not be cosy but nor should they be boiling cauldrons of conflicts and resentments. Arguably the relationship should be characterised by constructive conversations, considered challenge and democratic direction. A review of the governance of policing and of the concept of operational independence could cool the cauldron of conflict and is probably overdue. Consideration of applying approaches analogous to organisational

justice (Greenberg, 1987) when dealing with chief officers might also lead to more constructive conversations between overseen and overseers.

This thesis highlights a concern that chief officers are constructing narratives, particularly of consent and protecting the vulnerable, that allow them to claim a privileged perspective which enables them to pursue their own agendas for the use of power. This could be construed as being in tension with other elements of the findings, which identified that chief police officers constitute an elite that perceives itself to be increasingly precarious and consequently hesitant to use power. These findings are not mutually exclusive. Where the agendas of chief officers and PCCs are reasonably comfortably aligned anxieties are mitigated and narratives of vulnerability and consent can be conveniently deployed in the interests of the priorities of both PCCs and chief officers. Where there is the prospect of conflicting agendas these legitimating narratives remain relevant as tools to seek to persuade those in oversight to modify their priorities and to gather support from broader audiences. Whether these priorities reflect the wider needs of citizens is contestable and is an issue that is worthy of further research, and it is to areas of further research suggested by this thesis that I now turn.

## **Areas for further research**

### *Conversations*

As identified when discussing consensual policing there is a need to improve conversations between police and citizens to gauge and build consent, particularly with people who tend to be policed more than they are protected. There is research in this area, such as Virta and Branders (2016) work on deliberative democracy. However, more research to identify effective ways of facilitating these conversations might, if acted on, help to address the inequality of arms in discourses of legitimacy identified by Habermas (1976).

### *Performance approaches and police management cultures*

Participants were concerned about the disproportionate use of police power that was, arguably, a probably unintended consequence of target-based performance

management styles associated with new public management. However, stories of crude performance approaches were provided which pre-date new public management, and some participants said these behaviours persist. Although, most participants painted a picture of a more sophisticated and benign approach to current performance management, perhaps understandably as they are now in charge of the process. There has been research looking at police performance management, including a recent PhD thesis (Pantak, 2017). However, there is scope for further work to identify the extent to which the blunt approaches to managing performance described by participants is, or is not, a persistent feature of police management culture, or cultures.

#### *Chief officers' sense of policing purpose*

In chapter five participants suggested that their views about the purpose of policing and their understandings of the right to exercise power had altered during their careers. There was insufficient data to judge the extent to which these reported changes reflected variations in society, policing, political priorities or the altered perspective provided by senior rank. There is little research to understand how police officers sense of policing purpose develops over time, apart from Charman's (2017) longitudinal study of very junior police officers. Further research to examine how senior police officers form their sense of policing purpose and understandings of the right to exercise power would help to fill this gap.

#### *Drifting accounts of policing purpose and practise*

This research revealed a shift from chief officers voicing a broad duty to protect people and property towards a discourse of prioritising the protection of the most vulnerable, although it was hard to discern what was meant by vulnerable. This alteration in priorities was not fully explained by my research. Vitale (2017) advocates an assessment of what police are really for and expresses concerns about a drift in policing from traditional priorities towards an ill-conceived attempt to deal with a wide-array of social ills. Vitale (2017), Pratt (2017) and Wells (2016 and 2018) have identified changes in policing priorities. However, more research is required to

interrogate why this has happened and to test the extent to which the discourse is reflected in practise.

#### *Relating rhetoric to practise*

This research found that participants tended to express liberal views that stressed proportionality and human rights, a finding that echoes Punch (2009). However, as with Punch (ibid.) this thesis did not test whether this liberal rhetoric was reflected in what chief officers do. Further research is required in this area.

#### *Gendered approaches to power*

Five participants, three women and two men, raised concerns about gendered stereotypes of how a chief officer should behave and suggested this reflected a negative aspect of police culture and influenced how power was used and understood. Some participants argued that this stereotype was reinforced by expectations held by those overseeing the police, including HMIC and by those responsible for appointing, and indeed dismissing, chief constables. However, this research was not designed to collect or interpret information about gendered approaches, and the data gathered on gendered attitudes to power was limited. Therefore, further speculation as to what this data means would not assist in answering the primary research question. Some of the data gathered is offered in Appendix F, as a starting point for a discussion about future research into potentially gendered understandings held by chief police officers.

### **Conclusion**

The chief police officers who participated in this research were generous with their time and thoughts and their understandings of the right of police to exercise power were complex and layered. In explaining this supposed right all participants invoked duties to protect the public (particularly the most vulnerable), policing by consent and explanations involving law and associated checks and balances. However, this represented the surface and the layers were lifted and sifted to interpret not just what was said but why it was said and what it might mean. This analysis revealed constructs

which were confused, conflicted and, above all, convenient and this insight is the central academic contribution made by this research.

Confusion was evident in participants' vague visions of vulnerability, and who was vulnerable or how they were vulnerable was unclear. The priority being given to broader, arguably traditional, duties to keep the peace and protect people (not just those deemed vulnerable) and their property was also obscure. Accounts of consensual policing rested on hazy notions of consent, linked to dubious founding myths of British policing (Emsley, 2014). The need to gauge and build consent through dialogue was recognised but accounts of how this was achieved were confused and unconvincing. When discussing understandings based in law participants described a diminished operational independence as 'grey' and 'blurry', which may have implications for the ability or will of chief officers to resist the imposition of partisan priorities that could infringe civil liberties.

Understandings were also conflicted, notably between a rhetoric of consent and the practice of coercion, which was thrown into relief by tales of withdrawn consent. Narratives of vulnerability and policing by consent also clashed, as hunting hidden demons of vulnerability may not compensate for failing to tackle issues that are more immediate and important for many people. Participants worried about managing competing interests, including conflicts between the police as an arm of state power, and the interests of citizens locally. Participants recognised that legality does not equate to legitimacy, but their accounts were rich in tales of legal but disproportionate and arguably illegitimate use of police power, some of which they were likely to have been party to. Similarly, participants' recognition that law and associated checks and balances are important in ensuring police power is used properly sat uncomfortably with their distaste for the process of scrutiny, which they often perceived as unfair and overly intrusive, and for their scrutineers, whose motives and competence they questioned. These anxieties contributed to participants' perceptions that they were pressured, and their positions were precarious. This has potential consequences for the ability, or willingness, of chief officers to exercise power in the interests of 'them' and to resist demands from the 'great and the good' for the disproportionate and partisan use of police power.

Recurring accounts of complexity and change can be convenient in helping chief officers assert a privileged perspective and expertise when making decisions about the use of power. The vagueness of vulnerability and the haze of consent may also be convenient legitimating narratives, which cloak coercion and control. A leitmotif was a convenient construction of a broadly consensual ‘now’ as a benign counterpoint to a coercive ‘then’, which could be used to draw attention away from contemporary concerns about police legitimacy. Together these stories may help chief officers, but also PCCs and the Home Secretary, to set priorities for the use of police power that are difficult for ‘democratic audiences’ (Jeferson and Grimshaw, 1984: 64) to challenge, particularly when ‘folk devil[s]’ (Wells, 2016: 278) and policing myths (Emsley, 2014) are invoked in attempts to legitimate such agendas.

This research interrogated taken for granted assumptions about, and claims to, the right of police to exercise power. This included examination of the drift from a conceptualisation of a right to exercise police power based on a broad duty to protect, to a discourse of vulnerability. Questions were posed about legitimating narratives of consent that obscure the coercive features of policing, as it may be better to accept and control coercion, rather than to cloud its inevitable use. Additionally, justifications for the use of power based in law were examined, revealing an apparently splintered system of scrutiny and checks and balances. Finally, the confused, conflicted and convenient understandings of the right of police to exercise power held by chief police officers in England and Wales exposes the need for a thoughtful public debate about the purpose of policing and the use of police power.

## **Appendix A**

### **International Literature**

There is limited published international academic research looking at chief police officers, in English or other languages. There is one American study, Isenberg's (2010) *Police Leadership in a Democracy: Conversations with America's Police Chiefs*, which was considered. This work is primarily a study for policing, rather than of policing (Roche, 2013). Its intended audience is aspiring chief police officers and it tends to hagiography, notably in the pen pictures of the chief officers interviewed (Isenberg, 2010: 17-23).

The different political and cultural contexts within which American police chiefs operate makes comparisons with England and Wales difficult, this is evident in the detailed discussions of the relationships with mayors related by Isenberg. The study was also difficult to contextualise, not only culturally but also chronologically, as many of the chiefs interviewed were long retired and some anecdotes were very dated. The context made transferrable understanding difficult; one example being the sizes and natures of the forces led by the chiefs interviewed, as some were small, from policing just under thirty thousand people (which might warrant an inspector or sergeant commanding the area in England or Wales), to nearly nine million. The demographics in terms of income per head also vary substantially, as do the ratios of officers to citizens (Isenberg, 2010: 142-143).

There were echoes of themes that emerge in the literature looking at police chiefs in England and Wales. Notably in Isenberg's central theme of chief officers tackling dilemmas and balancing enforcement and protection against the liberty of the individual (Isenberg, 2010: 30). This concern is unlikely to be limited to chiefs in the USA, indeed in writing about England and Wales McLaughlin (2007: 80-81) observes that chief officers are conscious of 'the ambivalence surrounding the police task in a liberal democracy'. However, the different constitutional and cultural context in which police chiefs in the United States operate limits the relevance of Isenberg's study to this thesis.



In the European context Caless and Tong (2015) have recently written *Leading Policing in Europe: An Empirical Study of Strategic Police Leadership*. The authors draw attention to the different environments in which police leaders work across Europe (ibid. 27–56). The study drew on 49 semi-structured interviews, some face to face and others by telephone, and 59 structured questionnaires across 29 countries (ibid. 24). However, the respondents were mainly not chief officers (partly for reasons of difficulty in obtaining access), although they did have positions of influence. Ten respondents came from the British Isles and appear to have been drawn from the superintending ranks. Caless and Tong's (2015: 229) observation that this elite 'remains an enigma, even inside policing, and for many reasons, including democratic accountability, we need to understand how this elite works and to ask whether it is properly accountable or merely self-referential', supports the need for research in this area.

Police legitimacy is addressed at points in the book, particularly in the context of 'maintaining legitimacy whilst at the same time changing police structures' ... [in] ... 'Europe's young democracies' (ibid. 173). It was also clear that many of the police leaders spoken to 'emphasised the importance of police legitimacy as a challenge' (ibid. 177). There were also echoes of Caless' earlier (2011) study of police chief officers in England and Wales in the European senior officers' 'weary, even jaundiced, view of police accountability in practice' (Caless and Tong, 2015: 229).

In the discussion of the challenges facing policing there were also similarities between the views of many of Caless and Tong's participants (2015: 235) and those interviewed for this research, in relation to complexity, change and emerging challenges; notably when dealing with terrorism and cybercrime. However, the difference in political and cultural contexts and its focus on transnational issues, in conjunction with the differences in the ranks of the officers participating, limits the relevance of Caless and Tong's (2015) study to this thesis.

## **Appendix B**

### **Interview Schedule**

#### **How do chief police officers understand the right to exercise power?**

1. Please tell me a little bit about yourself, including your career history; specialisms; national work and relevant courses attended. *(if not mentioned ask 'why did you join/remain in the police service?')*
2. Please tell me a bit about your education, before and since joining the police.
3. Please tell me a little bit about your social background.
4. Please describe your general approach to policing: purpose; mission, style and values.
5. How do you define accountability?
6. What is your approach to accountability?
7. How are you held to account?
8. What are your views on the concept of policing by consent?
9. Can you give examples of when consent has, or has not, been given?
10. How did you know that consent was given or withheld?
11. How do you define constabulary/*operational* independence?
12. What are your views on constabulary/*operational* independence?
13. Can you provide any examples to illustrate your understanding of constabulary/*operational* independence?
14. Could you explain how you balance the various challenges involved in delivering policing?
15. Can you provide any examples of how you strike this balance?
16. Have performance management regimes and changes to performance management impacted (positively or negatively) on police legitimacy?
17. Can you give any examples of the impact of performance management on police legitimacy? *(if not yet apparent ask directly, 'what does police legitimacy means to you?')*
18. How, if at all, have changes in governance of policing impacted on legitimacy?

19. Over your career have you observed any changes in the way in which chief officers exercise their power?
20. Can you give specific examples of your personal exercise of power that caused you concern about your right to exercise power?
21. Can you give examples of the exercise of power by police, more generally, that give you concern about the right of police to exercise power?
22. To what extent is the way in which you use power, and more broadly how you view the exercise of power by police, influenced by: laws; regulations and formal guidance? *(If not mentioned prompt to obtain views about the Code of Ethics)*
23. *What gives the police the right to exercise power?*

## **Appendix C**

### **Participant Information Sheet**

#### **Research Title**

How do chief police officers understand the right to exercise power?

#### **Invitation to participate**

You are being invited to participate in a research study. Before you decide whether to participate, it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully and feel free to ask if you would like more information or if there is anything that you do not understand. Please also feel free to discuss this with your friends or colleagues if you wish. I stress that you do not have to accept this invitation and should only agree to take part if you want to.

#### **What is the purpose of the study?**

How chief officers understand the right to use power may have significant implications, positive or negative, for those over whom power is exercised; particularly as chief officers may significantly influence the environment in which more junior officers exercise power. The purpose of this research is to gain knowledge about these understandings.

#### **Why have I been chosen to take part?**

A cross section of serving police officers in England and Wales in the ranks of assistant chief constable, deputy chief constable and chief constable, and equivalent Metropolitan Police Service and City of London Police ranks, have been approached and invited to participate in this study. You have been selected to participate in this study as you are a member of this group.

### **Do I have to take part?**

Participation is voluntary and you are free to withdraw at any time without explanation and without any disadvantage to you.

### **What will happen if I take part?**

The research is being conducted using semi-structured interviews. I am a post graduate researcher at the University of Liverpool and this study is central to my doctoral research.

I will contact you and make arrangements to conduct the interview. The interview will take between one and two hours. I will seek formal consent to the audio recording prior to the start of the interview. If you do not agree to audio recording I would continue with the interview if you consent to me taking notes during the interview. Following the interview I will send you a transcript of the interview with an invitation to comment on matters of factual accuracy. As findings from the study start to emerge you will also be sent draft versions of these findings and be given an opportunity to comment on them.

I am being supervised by Professor Sandra Walklate and Dr Lynn Hancock at the University of Liverpool. Should there be any issues you wish to discuss I can be contacted at [Ian.Shannon@liverpool.ac.uk](mailto:Ian.Shannon@liverpool.ac.uk) or 07766 992208 or 0151 327 5318. If I cannot resolve these issues for you my supervisors can be contacted at [S.L.Walklate@liv.ac.uk](mailto:S.L.Walklate@liv.ac.uk) and [L.Hancock@liverpool.ac.uk](mailto:L.Hancock@liverpool.ac.uk).

### **Are there any risks in taking part?**

None identified.

**Are there any benefits in taking part?**

The research may shed light on an important issue for society, the legitimacy of the police.

**What if I am unhappy or if there is a problem?**

If you are unhappy, or if there is a problem, please let me know by contacting me on 07766 992208 or 0151 327 5318 or [Ian.Shannon@liverpool.ac.uk](mailto:Ian.Shannon@liverpool.ac.uk) and I will do my best to help. If you remain unhappy or have a complaint, which you feel you cannot resolve with me or my supervisors, then you should contact the Research Governance Officer at [ethics@liv.ac.uk](mailto:ethics@liv.ac.uk). When contacting the Research Governance Officer, please provide details of the name or description of the study (so that it can be identified), my details, and the substance of the complaint you wish to make.

**Will my participation be kept confidential?**

Interviews will, subject to your consent, be digitally recorded. The recording and subsequent transcript will be stored on the secure section on the University of Liverpool computer server. Transcripts and written notes will be anonymised and in order to protect your privacy a pseudonym will be used. Similarly all research findings put into the public domain will be anonymised. Access to the data will be confined to me and my supervisors. When the research is complete the audio recordings, transcripts and written notes will be stored either until my PhD has finalised, or for seven years, whichever is the sooner. The data will then be securely disposed of.

**What will happen to the results of the study?**

The findings will be used in my PhD and in any publications arising from it.

**What will happen if I want to stop taking part?**

You can withdraw at any time, without explanation. Results up to the period of withdrawal may be used, if you are happy for this to be done. However, once the information you have provided has been anonymised it cannot be withdrawn.

**About me**

I retired from the police in June 2013 as Deputy Chief Constable in North Wales and before that served with Merseyside Police and the Metropolitan Police. I am now a post graduate researcher at the University of Liverpool and undertake occasional work, as an Associate, for Her Majesty's Inspectorate of Constabulary.

**Who can I contact if I have further questions?**

Ian Shannon, on 07766 992208 or 0151 327 5318 or [Ian.Shannon@liverpool.ac.uk](mailto:Ian.Shannon@liverpool.ac.uk)

**Thank you**

Thank you for taking the time to read this information sheet and for agreeing to participate in this study.

## Appendix D

### Participant Consent Form

**Title of Research**      How do police chief officers in England and Wales

**Project:**                understand the right of police to exercise power?

**Researcher:**

Ian Shannon

**Please  
initial  
box**

I confirm that I have read and have understood the information sheet dated [05/06/2015] for the above study. I have had the opportunity to consider the information, ask questions and have had these answered satisfactorily.

I understand that my participation is voluntary and that I am free to withdraw at any time without giving any reason, without my rights being affected. In addition, should I not wish to answer any particular question or questions, I am free to decline.

I understand that, under the Data Protection Act, I can at any time ask for access to the information I provide and I can also request the destruction of that information if I wish.

I agree to take part in the above study.



I understand that confidentiality and anonymity will be maintained and it will not be possible to identify me in any publications

☐

I understand and agree that my participation will be audio recorded and I am aware of and consent to your use of these recordings for transcription and analysis by the researcher.

☐

I agree for anonymised data collected from me to be used in relevant future research.

☐

I understand and agree that once I submit my data it will become anonymised and I will therefore no longer be able to withdraw my data.

☐

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Participant Name

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Date

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Signature

## Appendix E

### **THRIVE Assessment Template<sup>33</sup>**

Threats	This is any future intention to do harm by any party.
Harm	The damage or level of injury caused or likely to be caused, consider people, organisations and communities
Risk	The likelihood of the harm or threat happening
Investigation	The purpose of this assessment is to define the proportionate investigative plan and owner
Vulnerability	The circumstances that make harm or risk more likely. Consider people, organisations and communities
Engagement	Building relationships and confidence is a key part of our role. Consider the victim, internal departments, other organisations and the wider public expectation

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<sup>33</sup> Adapted from a template provided by Cheshire Police in an e-mail dated 27 June 2017, in response to a request from the researcher for an explanation of their risk assessment process.

## **Appendix F**

### **Silverbacks and Lord Flashheart – Gendered Understandings?**

This research did not set out to explore the impact of gender on how the right to exercise power is understood. However, five participants, three women and two men, raised it and this appendix is offered as a starting point for a discussion about research into potentially gendered understandings held by chief police officers about the right of police to exercise power.

CC Trudy was the clearest in laying out how gender might relate to the way power is used and understood by chief officers:

I still think there's a gender issue. So – and the reason I say that is because people still have a view about what a leader is and what a powerful leader is and ... it's about masculine stereotypes. ... there's still a certain type of leader and so, if you link that to use of power and how they display it, that it's still being promoted as that's the way it should – and that's – we've still got that flaw – it's almost that flaw of you don't figure out right and wrong, you just have to be certain and bang the table a lot ... And, if you also look at what comes from the HMI as well, around the leadership stuff – if you look at the treatment of female chiefs – so you either subscribe to the fact that we're all not very good, or there's something still going on there. And it's not just female chiefs ... [although] if you look around, there are less people in that silverback-type role – that was always the expression that was used, wasn't it – than there used to be. But there is – there are – these things are still going on'.

CC Trudy was not the only participant to mention Silverbacks, (examples were provided by participants of both men and women who participants suggested fell into this broad category) although CC Simon also felt the issue was less pronounced than in the past:

people sometimes talk about the Big Silverbacks – you know, XXXX was one of them. XXXX was another – you know, you could trot off those Chiefs – and there was probably six or ten of them who were big hitters – you know, XXXX – you can name them, as I can. It seems now to be less clique-y.

CC Trudy cast some of the responsibility for the persistence of certain gendered types, or stereotypes, of approaches to the use of power on HMIC. CC Alan expanded this into

include those who select chief officers (police authorities and now PCCs) and to the influence of training, particularly the Strategic Command Course (SCC):

I had a discussion with a Chair of the Police Authority some years ago about some issues they had with a particular Chief [and qualities they wanted in a new Chief] ... they used the word 'kindness' at one point and another word they used, it was about service – you know, service and selflessness. Was that in the job advertisement you put out? It wasn't ... The Service has been selecting particular types of people and then are surprised when the people they have selected are doing what was in the advertisement ... the course [Strategic Command Course] valued particular things. So, for example, the more mouthy you were, the better grades you seemed to get. And it did value that type of Lord Flashheart type of behaviour, the ego-driven behaviour.

DCC Anthony made a very similar point about the Strategic Command Course. CC Alan's and DCC Anthony's comments support Chan's (1996) argument that police cultures reflect wider cultures. It is possible that the behaviour of wider elites, particularly those who select chief constables, is reflected in chief officers' behaviour and approach to power. Indeed, the selection and training processes, discussed in chapter five, may play a part in replicating these attitudes and behaviours. Participants tended to suggest that potentially gendered, brash and ego-driven behaviours were less prevalent now, but this research was unable to test this.

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